

EXHIBIT A

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form		ENTER CHARGE NUMBER <input checked="" type="checkbox"/> EEOC 420 2006 05187
_____ and EEOC (State or local Agency, if any)		
NAME (Indicate Mr., Ms., or Mrs.) Linda Thornton		HOME TELEPHONE NO. (Include Area Code) 334-693-4488
STREET ADDRESS 100 Armstrong Street	CITY, STATE AND ZIP Headland, AL 36345	COUNTY Henry
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)		
NAME Flavor House Products, Inc.	NO. OF EMPLOYEES/MEMBERS Over 15	TELEPHONE NO. (Include Area Code) 334-983-5643
STREET ADDRESS 2700 Horace Shepard Road	CITY, STATE AND ZIP Dothan, AL 36303	COUNTY Houston
NAME _____		TELEPHONE NO. (Include Area Code) _____
STREET ADDRESS _____	CITY, STATE AND ZIP _____	COUNTY _____
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es): <input type="checkbox"/> Race <input type="checkbox"/> Color <input checked="" type="checkbox"/> Sex <input type="checkbox"/> Religion <input type="checkbox"/> Age <input type="checkbox"/> Disability <input type="checkbox"/> National Origin <input checked="" type="checkbox"/> Retaliation <input type="checkbox"/> Other		DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, year) June 16, 2006
THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s): Social Security Number: <u>078-62-7979</u> Date of Birth: <u>5-16-64</u> Sex: <u>Female</u> Race: <u>Caucasian</u> I, Linda Thornton, began working for Flavor House Products, Inc. on or about June 25, 2001. While employed at Flavor House, I suffered sexual discrimination and retaliation. The sexual discrimination started during my first year of employment with Flavor House and continued throughout my employment. I was forced to resign my position with Flavor House on or about June 21, 2006, following my complaints to management of sexual discrimination and harassment.		
<input checked="" type="checkbox"/> I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - (When necessary to meet State and Local Requirements) I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
I declare under penalty of perjury that the foregoing is true and correct. 09-15-06 Linda Thornton Date Charging Party (Signature)		SIGNATURE OF COMPLAINANT Linda Thornton SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year) _____ 11-8-06

LINDA THORNTON V. FLAVOR HOUSE -
 PLAINTIFF'S RFP DOCS 0147

Page 2 EEOC Charge

Name:

Social Security #:

Date:

Linda Thornton
078-62-7979
9-15-06

So much has happened that I cannot possibly set out everything, but the following is a brief summary of the sexual discrimination and/or harassment that I was subjected to while employed at Flavor House Products, Inc.

During my first year of employment, I repeatedly tried to get a promotion to "Label Operator". I was passed over several times and the position was given to temporary male employees with less or no experience. Unlike the male employees, I was required to provide a resume listing my mechanical experience before I was given the position. The discrimination continued even after I received the position in that I did not receive the training that the male operators/employees received. Additionally, the mechanics, all male, and other male employees made derogatory comments about me working "in a man's job." The mechanics did not like for me to make adjustments to my machine. If I took longer than 5 minutes to make adjustments, they would push me out of the way and make the adjustments or they would call the male supervisor over to make the adjustments. However, the male operators made adjustments that took longer than five minutes and nothing was said. I suffered this discriminatory treatment from the time I was put in the Label Operator position until I was forced to resign. My supervisor was aware of the discriminatory treatment; however, he did nothing to stop the discrimination. I also made numerous complaints to Marianne Boyer, Director of Operations, about the sexually discriminatory work environment that the female employees, including myself, were forced to work in on a daily basis. I told her that the mechanics, who are all male, cursed at and yelled at the female employees and that they called the female employees derogatory names. I reported to her that the mechanics would not allow the female operators to make minor repairs on their machines, but did not say anything when male employees made the same or similar repairs. However, Boyer's typical response to my complaints was to tell me that I would have to "deal with it" as she had learned to "deal with it" and then gave me two examples of discrimination she had do "deal with" in the company.

The first time I worked with Frank Williams was sometime in 2003. He was supposed to help me learn how to run his machine. I worked with him for three to four weeks. During that time, he yelled at me and cursed me. He also called me a "fucking stupid bitch". I complained to Melvin Hutchins, a member of management, but Hutchins told me that Williams was the only one that knew how to run the machine so I would just have to get along with him. I didn't work with Williams again until the beginning of 2006. I applied for a position as Line 3 Label Operator and received the position. Williams was not in the department when I applied; however, he was moved to the department shortly afterwards as the Team Leader. From then until I was forced to resign, Williams treated me in a discriminatory and demeaning manner. He yelled at me and cursed at me every day. Williams constantly talked about his sex life with his wife. He talked about how often he had sex, how they had sex, where they had sex, and how often they had sex. He even said he could tell his wife was cheating on him because of the way she "felt" when they had sex. Williams was also very vocal about the fact that he was a registered sex offender. I complained about Williams and his discriminatory treatment many times. I complained to Hutchins and Chris Jordan, Supervisor. They told me it would be taken care of, but to my knowledge, nothing was ever done as Williams' discrimination continued. A few months before I was forced to leave my employment, I was written up for telling another employee that Williams was a registered sex offender even though Williams made this statement himself almost every day. At first I was called in and told not to discuss Williams history although he discussed it everyday. I was told that the matter would be dropped, but if I discussed his criminal history again, I would be written up. A few days later, another female employee told me that Williams was making threats to hurt me. I reported these threats to management and was written up for discussing Williams history after being told not to talk about it. The employee that told me about the threats was fired shortly afterwards. Williams was the reason I was forced to resign my position with Flavor House.

On or about June 14, 2006, I was operating the label machine on Line Three, my usual position. Williams took over my machine during my break. When I came back, Williams was re-loading my machine with labels. I saw that the

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Name: Linda ThorntonSocial Security #: 078-62-7979Date: 09-15-06

paperwork had not been done while I was on break so I started on it to get caught up. There was also an overflow of re-work that needed to be done and a box full of bad labels that had to be re-done. As the company was having an important audit done that day, I asked Williams to help me with the re-work when he walked by. Williams turned around and shouted at me that he had "better mother-fucking things to do than fucking re-work." Williams continued to yell at me and kept repeating, "God damn mother fucker" at me. I tried to ignore him. Williams walked to the outside of the line and continued to yell at me. While still yelling "God damn mother-fucker" at me, he began picking up pallets and slamming them down. He also picked up a large bag of trash and threw it. By this time, a line mechanic had walked up and I asked him several times to call a supervisor on the radio. He tried to call a couple of supervisors and was told "it will be one minute." Donald Coty, the Mechanic Supervisor, walked by and I asked him to call Melvin Hutchins. By the time Hutchins arrived, Williams had quit yelling and cursing at me, but was still throwing pallets around and glaring at me. Hutchins asked me what the problem was, and I told him that I knew it was not a good time for this because the audit was going on, but this was the last time Williams was going to lose his temper and "go off on me" by cursing and yelling at me and calling me a "God damn mother-fucker" for no apparent reason. Hutchins called Chris Jordan, Packaging Supervisor, and he came over to my line. Jordan inventoried my tool bag and then told me to come to his office that afternoon and write out a statement of what happened. I began crying as I told him about Frank's discriminatory treatment and that I was tired of having to deal with Williams. Jordan assured me the situation would be resolved. Hutchins and Jordan then left to go back to the audit. From the time they left until three o'clock when I went to the front office, Williams stood at my re-work table and glared at me. I was extremely uncomfortable. At three o'clock, I went to Jordan's office and wrote out a statement. I was still very upset and told Jordan that I didn't know what Williams' problem was and he said he didn't care what Williams' problem was and that he would turn in my statement in the morning. I also told Jordan that Williams went and asked Catherine Long, a nearby co-worker, if she thought he had yelled at me, and Ms. Long told him twice that she thought he had yelled at me.

On or about June 15, 2006, I returned to work and tried to do my job while avoiding Williams. My co-workers were called in to the office to provide statements regarding the incident. Williams returned to my re-work table and glared at me the same way he had the day before. He would also walk up close to my machine and stop and stare at me. Williams' demeanor was very intimidating and because I knew that he had a history of violence against women, I was afraid he was going to hurt me. I was so scared of Williams that I took a screwdriver out of my tool bag and began carrying it around in my back pocket. When he was not standing at my re-work table or next to my machine, he would go to the filler machine and talk to Stephanie. He would turn around and glare at me from time to time during his conversation. Melvin Hutchins walked by and I told him that I was not comfortable working with Williams and that I did not feel safe around Williams. Hutchins told me that he had read my statement and agreed that he would not feel safe either. He reassured me that the situation would be resolved. He told me not to let it get me down and to "pray on it". Later that day, I was moved to the Line 5 label machine; however, this was still in the same department with Williams and only a few feet away. This move afforded me no protection from Williams.

On June 16, 2006, I reported back to work and heard over the radio that Williams was not going to be at work that day. I called Jordan and asked if I was going to be moved back to my regular line, Line 3, since Williams was not going to be there. He said "no". I saw Hutchins later that morning and asked him if the move to Line 5 was permanent. He told me that he needed me on Line 5 right then and could not answer if the move was permanent. I then asked Ricky Smothers, the Supervisor over all Supervisors, if the move was permanent and he told me I would have to talk to Tommy (LNU) in PR. I asked Ricky if he was aware of what happened to me the day before. He said that he had heard bits and pieces of what happened. I asked him if he had read my statement and he said "no". I realized at that point that Williams was not going to be disciplined for his discriminatory behavior and that I was not going to be protected from him. I was so

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Name:

Linda Thornton

Social Security #:

078-62-7979

Date:

09-15-06

upset that I had to clock out and go outside to calm down. Hutchins and Ricky followed me outside and told me to leave the property and come back in an hour to meet Tommy. I told them that I was too upset to drive so they told me I should wait in the car for Tommy to get there so I could talk to him. They did not want the other employees to see me crying and upset. I waited and spoke with Tommy and Marianne Boyer, CEO, about the situation with Williams. Despite my statement and statements from witness, they concluded that I had "baited" Williams. I tried to explain to them again that I did not feel safe working with Williams and that I had started carrying a screwdriver in my back pocket. Recognizing that they were not going to resolve the situation with Frank, I placed my badge on Tommy's desk. Boyer asked me not to quit and to think about it over the weekend. I repeatedly told Boyer that I did not feel safe working with Williams to which she responded several times that if this was a court of law the action they had taken would be acceptable. She accused me of having an issue with sexual discrimination, and even though she told me that the law required them to provide a safe work environment, she told me that Williams would not be terminated. She said I would be moved to Line 5 and Williams would be on Line 3 and that we would stay that way for three months to see which of us had a conflict first. There was no mention of a write up during this conversation. However, it was later stated that if I had returned to work following this incident, I would have been written up although I had done nothing wrong.

The next three scheduled work days I called in sick because I was too afraid to go in and face Williams. A female employee told me that the first two days I was out, Williams asked her where I was. On the third day, Flavor House called back and left a message that I would have to have a doctor's excuse to return to work. I called Leah Allums in Personnel Resources and told her that I would not be returning because I did not feel I would be safe working with Williams. I learned that after my employment ended, Williams was written up for cursing at another female employee.

I believe that I suffered from sexual discrimination, harassment, and retaliation while employed with Flavor House Products, Inc., and that I was discriminated against because of my sex, female. I have been discriminated against because of my sex in job assignments, training, promotions, wages, discipline, discharge, and other terms, conditions, and privileges of employment; and retaliated against in that the conduct was wilful, malicious, and in wanton disregard of my federally protected rights.

Linda Thornton
Charging Party

09-15-06
Date

EXHIBIT B

EEOC FORM 131 (5/01)

U.S. Equal Employment Opportunity Commission

Department of Human Resources FLAVOR HOUSE PRODUCTS, INC. 2700 Horace Shepard Road Dothan, AL 36303	PERSON FILING CHARGE
	Linda Thornton
	THIS PERSON (check one or both) <input checked="" type="checkbox"/> Claims To Be Aggrieved <input type="checkbox"/> Is Filing on Behalf of Other(s)
EEOC CHARGE NO. 420-2006-05107	

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

- ☒ Title VII of the Civil Rights Act
 ☐ The Americans with Disabilities Act
☐ The Age Discrimination in Employment Act
 ☐ The Equal Pay Act

The boxes checked below apply to our handling of this charge:

- ☐ No action is required by you at this time.
- ☐ Please call the EEOC Representative listed below concerning the further handling of this charge.
- ☒ Please provide by **26-OCT-06** a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
- ☐ Please respond fully by _____ to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
- ☒ EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by **11-OCT-06** to **Debra B. Leo, ADR Coordinator, at (205) 212-2033**. If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Deidre J. Rivers,
ADR Assistant

EEOC Representative

Telephone **(205) 212-2146**

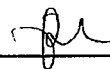
Birmingham District Office
Ridge Park Place, Suite 2000
1130 22nd Street, South
Birmingham, AL 35205

Enclosure(s): ☒ Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN ☐ AGE ☐ DISABILITY ☒ RETALIATION ☐ OTHER

See enclosed copy of charge of discrimination.

Date	Name / Title of Authorized Official	Signature
September 26, 2006	Bernice Williams-Kimbrough, District Director	

LINDA THORNTON V. FLAVOR HOUSE -
PLAINTIFF'S RFP DOCS 0146

EXHIBIT C

(Part 1 of 2)

FREEDOM COURT REPORTING

1	3
<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE MIDDLE DISTRICT OF ALABAMA</p> <p>3 SOUTHERN DIVISION</p> <p>4</p> <p>5 CIVIL ACTION NUMBER 107cv-712-WKW</p> <p>6 LINDA THORNTON,</p> <p>7</p> <p>8 Plaintiff(s),</p> <p>9 v.</p> <p>10 FLAVOR HOUSE PRODUCTS, INC.,</p> <p>11</p> <p>12 Defendant(s).</p> <p>13</p> <p>14 DEPOSITION TESTIMONY OF:</p> <p>15 TOMMY NANCY</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Commissioner:</p> <p>21 Renny D. McNaughton</p> <p>22 June 10, 2008</p> <p>23 Dothan, Alabama</p>	<p>1 oral testimony taken the 10th day of June,</p> <p>2 2008, along with exhibits.</p> <p>3 Please be advised that this is the</p> <p>4 same and not retained by the Court Reporter,</p> <p>5 nor filed with the Court.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>
2	4
<p>1 STIPULATION</p> <p>2 IT IS STIPULATED AND AGREED by and</p> <p>3 between the parties through their respective</p> <p>4 counsel that the deposition of Tommy Nance,</p> <p>5 may be taken before Renny D. McNaughton,</p> <p>6 Court Reporter and Notary Public, State at</p> <p>7 Large, at the offices of Bobbie Crook,</p> <p>8 Dothan, Alabama, on the 10th day of June,</p> <p>9 2008, commencing at approximately 9:00 a.m.</p> <p>10 IT IS FURTHER STIPULATED AND AGREED</p> <p>11 that it shall not be necessary for any</p> <p>12 objections to be made by counsel to any</p> <p>13 questions, except as to form or leading</p> <p>14 question and that counsel for the parties</p> <p>15 may make objections and assign grounds at</p> <p>16 the time of trial or at the time said</p> <p>17 deposition is offered in evidence, or prior</p> <p>18 thereto.</p> <p>19 In accordance with Rule 5(d) of the</p> <p>20 Alabama Rules of Civil Procedure, as</p> <p>21 amended, effective May 15, 1988, I, Renny D.</p> <p>22 McNaughton, am hereby delivering to Ms.</p> <p>23 Robertson the original transcript of the</p>	<p>1 INDEX</p> <p>2 EXAMINATION BY: PAGE NO.</p> <p>3 Ms. Robertson 9</p> <p>4</p> <p>5 EXHIBITS</p> <p>6 No. 1 17</p> <p>7 No. 2 48</p> <p>8 No. 3 52</p> <p>9 No. 4 66</p> <p>10 No. 5 67</p> <p>11 No. 6 68</p> <p>12 No. 7 72</p> <p>13 No. 8 95</p> <p>14 No. 9 125</p> <p>15 No. 10 103</p> <p>16 No. 11 103</p> <p>17 No. 12 104</p> <p>18 No. 13 137</p> <p>19 No. 14 140</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>

1 (Pages 1 to 4)

367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

FREEDOM COURT REPORTING

<p>5</p> <p>1 APPEARANCES</p> <p>2 FOR THE DEFENDANT (S):</p> <p>3 Jennifer F. Swain</p> <p>4 Baker, Donelson, Bearman, Caldwell &</p> <p>5 Berkowitz, PC</p> <p>6 Wachovia Tower, 420 North Twentieth Street,</p> <p>7 Suite 1600</p> <p>8 Birmingham, Alabama 35203-5202</p> <p>9 J. Scott Clark</p> <p>10 Senior Counsel</p> <p>11 Ralcorp Holdings, Inc.</p> <p>12 P.O. Box 618</p> <p>13 St. Louis, Missouri 63188</p> <p>14 FOR THE PLAINTIFF (S):</p> <p>15 Ann C. Robertson</p> <p>16 Wiggins, Childs, Quinn & Pantazis, LLC</p> <p>17 The Kress Building</p> <p>18 301 Nineteenth Street North</p> <p>19 Birmingham, Alabama 35203</p> <p>20 Also Present: Linda Thornton</p> <p>21</p> <p>22</p> <p>23</p>	<p>7</p> <p>1 Dothan, Alabama. My name is Joey</p> <p>2 McClain, representing Freedom Court</p> <p>3 Reporting. And would counsel identify</p> <p>4 yourself and state whom you represent.</p> <p>5 MS. ROBERTSON: Ann Robertson. I</p> <p>6 represent the plaintiff, Linda Thornton.</p> <p>7 MS. SWAIN: Jennifer Swain. I</p> <p>8 represent defendant Flavor House</p> <p>9 Products, Inc.</p> <p>10 THE COURT REPORTER: Usual</p> <p>11 stipulations?</p> <p>12 MS. SWAIN: Yeah, that's fine.</p> <p>13 MS. ROBERTSON: Plus our -- our</p> <p>14 agreed-to stipulation about the</p> <p>15 relatives.</p> <p>16 MS. SWAIN: That's fine. Let me</p> <p>17 ask --</p> <p>18 MS. ROBERTSON: Yeah, we'd better</p> <p>19 ask -- I was about to say we'd better</p> <p>20 ask him since he's not a party to these</p> <p>21 proceedings.</p> <p>22 MS. SWAIN: Yeah. You can, if</p> <p>23 you want to, ask for the opportunity to</p>
<p>6</p> <p>1 I, Renny D. McNaughton, a Court</p> <p>2 Reporter of Greenville, Alabama, and a</p> <p>3 Notary Public for the State of Alabama at</p> <p>4 Large, acting as Commissioner, certify that</p> <p>5 on this date, pursuant to the Alabama Rules</p> <p>6 of Civil Procedure, and the foregoing</p> <p>7 stipulation of counsel, there came before me</p> <p>8 at the offices of Bobbie Crook, Dothan,</p> <p>9 Alabama, commencing at approximately 9:00</p> <p>10 a.m. on the 10th day of June, 2008, Tommy</p> <p>11 Nance, witness in the above cause, for oral</p> <p>12 examination, whereupon the following</p> <p>13 proceedings were had:</p> <p>14</p> <p>15 THE VIDEOGRAPHER: This begins</p> <p>16 videotape number 1 in the deposition of</p> <p>17 Tommy Nance in the matter of Linda</p> <p>18 Thornton versus Flavor House Products</p> <p>19 and Franklin D. Williams, Jr., case</p> <p>20 number 107-CV-712-WKW. We are on the</p> <p>21 record at 9:02 a.m. June the 10th, 2008.</p> <p>22 This deposition is taking place at the</p> <p>23 office of Bobbie S. Crook, PC, in</p>	<p>8</p> <p>1 read your deposition transcript and make</p> <p>2 any changes you feel are necessary and</p> <p>3 then sign off on it, so that's your</p> <p>4 choice.</p> <p>5 THE WITNESS: Okay.</p> <p>6 MS. ROBERTSON: And -- and, also,</p> <p>7 we have a -- we have a -- the lawyers</p> <p>8 and I have an agreement. Ordinarily, I</p> <p>9 would sit here and ask you about all</p> <p>10 your relatives in the middle district of</p> <p>11 Alabama.</p> <p>12 THE WITNESS: Okay.</p> <p>13 MS. ROBERTSON: Now, you may have</p> <p>14 none or you may have a bunch. But --</p> <p>15 it's a waste of time, but it's necessary</p> <p>16 if we get to the point of having a jury.</p> <p>17 THE WITNESS: Okay.</p> <p>18 MS. ROBERTSON: So what we just</p> <p>19 agreed to is I won't do that here today.</p> <p>20 If we get to the point where we're going</p> <p>21 to court, then you will provide her a</p> <p>22 list of your relatives --</p> <p>23 THE WITNESS: Okay.</p>

FREEDOM COURT REPORTING

<p>9</p> <p>1 MS. ROBERTSON: -- and their</p> <p>2 spouses and -- and where they live and</p> <p>3 where -- where they work. Okay?</p> <p>4 THE WITNESS: Okay.</p> <p>5 MS. ROBERTSON: And that's not so</p> <p>6 I can go around and knock on the door</p> <p>7 and say, Do you know that man? It's so</p> <p>8 that I can make sure I don't put your</p> <p>9 auntie on the jury. Okay?</p> <p>10 THE WITNESS: I understand.</p> <p>11 MS. SWAIN: Would you like to</p> <p>12 reserve the right to read and sign your</p> <p>13 deposition transcript?</p> <p>14 THE WITNESS: Yes, please.</p> <p>15 MS. ROBERTSON: Is that agreement</p> <p>16 all right with you about the relatives?</p> <p>17 THE WITNESS: Yes.</p> <p>18 THE VIDEOGRAPHER: Excuse me.</p> <p>19 Off the record.</p> <p>20 (Off the record.)</p> <p>21 EXAMINATION</p> <p>22 BY MS. ROBERTSON:</p> <p>23 Q State your name, please, sir.</p>	<p>11</p> <p>1 in that facility or place?</p> <p>2 A Human resources manager, training</p> <p>3 and development manager.</p> <p>4 Q And why did you leave there?</p> <p>5 A We closed the plant.</p> <p>6 Q How long did you work there?</p> <p>7 A Two years.</p> <p>8 Q Now, what were your duties there?</p> <p>9 A Start-up of an automotive</p> <p>10 facility, hiring, general HR duties,</p> <p>11 training, development.</p> <p>12 Q Well, what -- what -- what does</p> <p>13 general HR duties entail or did it entail</p> <p>14 for that facility or that --</p> <p>15 A Interviewing new potential</p> <p>16 employees, hiring, training, orientation,</p> <p>17 issuing disciplinary actions, terminations.</p> <p>18 Q Did you do any training?</p> <p>19 A Yes. All new employee</p> <p>20 orientation training, general training for</p> <p>21 supervision. I would have to look at the</p> <p>22 schedule to see what exactly to train,</p> <p>23 specific classes.</p>
<p>10</p> <p>1 A Thomas Alan Nance.</p> <p>2 Q And do you live here in the area</p> <p>3 of Dothan?</p> <p>4 A Yes, ma'am.</p> <p>5 Q Where do you live?</p> <p>6 A 107 Sterling Ridge Court.</p> <p>7 Q And how long have you lived</p> <p>8 there?</p> <p>9 A Two and a half years.</p> <p>10 Q Where did you live before that?</p> <p>11 A Before that, I was in Gadsden,</p> <p>12 Alabama.</p> <p>13 Q Doing what?</p> <p>14 A I was unemployed at that time</p> <p>15 doing freelance work, HR work.</p> <p>16 Q How long did you do freelance</p> <p>17 work?</p> <p>18 A Six months, eight months.</p> <p>19 Q Where did you work before that?</p> <p>20 A CF Gomma G-O-M-M-A. CF Gomma --</p> <p>21 Q And then --</p> <p>22 A -- in Jacksonville, Florida.</p> <p>23 Q Okay. And -- and what did you do</p>	<p>12</p> <p>1 Q Now, they opened a place and</p> <p>2 closed in two years?</p> <p>3 A Yes, ma'am.</p> <p>4 Q What -- what -- did they make a</p> <p>5 automobile or an automobile part?</p> <p>6 A Made automotive brake lines for</p> <p>7 GM and Chrysler.</p> <p>8 Q Okay. And what caused you to go</p> <p>9 to Jacksonville -- Gadsden, Alabama?</p> <p>10 A That's my hometown. I moved back</p> <p>11 there after the plant closed.</p> <p>12 Q And what did you do when you say</p> <p>13 you freelanced?</p> <p>14 A I worked with a couple of</p> <p>15 companies for safety evaluation, safety</p> <p>16 program evaluations, benefits evaluations.</p> <p>17 Q And how did you get the job at</p> <p>18 Flavor House?</p> <p>19 A Applied through the online ad,</p> <p>20 sent in my application.</p> <p>21 Q And after your -- after you</p> <p>22 applied, what happened?</p> <p>23 A There were several rounds of</p>

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<p style="text-align: right;">13</p> <p>1 interviews. I interviewed. Phone</p> <p>2 interviews and then face-to-face interviews</p> <p>3 in Dothan.</p> <p>4 Q Who did you interview with?</p> <p>5 A Initially, the recruiter out of</p> <p>6 Ralcorp, the phone interview. I forget her</p> <p>7 name.</p> <p>8 Q Okay. And here is what I want to</p> <p>9 ask. Since Flavor House had several</p> <p>10 different owners, we just all call it Flavor</p> <p>11 House.</p> <p>12 A Flavor House. Okay.</p> <p>13 Q Yeah. Okay. And you don't know</p> <p>14 what her position was?</p> <p>15 A Not right off the top of my head.</p> <p>16 She was the person in charge of the primary</p> <p>17 database for candidates and applicants.</p> <p>18 Q And then after you had a phone</p> <p>19 interview with her, you went -- did you say</p> <p>20 you had a face-to-face?</p> <p>21 A If I recall, we went -- after the</p> <p>22 phone interview, there was a face-to-face</p> <p>23 interview in -- in Dothan with the -- with</p>	<p style="text-align: right;">15</p> <p>1 group interviews?</p> <p>2 A Not that I recall. Group</p> <p>3 interviews, no.</p> <p>4 Q Okay. And then after that, what</p> <p>5 happened?</p> <p>6 A I was made a job offer shortly</p> <p>7 after that.</p> <p>8 Q As -- what was -- what -- what</p> <p>9 was your title?</p> <p>10 A Human resources manager.</p> <p>11 Q Did you have a written job</p> <p>12 description?</p> <p>13 A Yes, ma'am.</p> <p>14 Q And what were your duties as the</p> <p>15 HR manager?</p> <p>16 A I'd have to refer to the written</p> <p>17 job description. Just general HR duties,</p> <p>18 hiring, terminations. I don't recall the</p> <p>19 specific duties without seeing that written</p> <p>20 job description.</p> <p>21 Q I don't think I have a job</p> <p>22 description, but I have a -- what's called a</p> <p>23 business and development goals. Maybe I</p>
<p style="text-align: right;">14</p> <p>1 the group, the management group there.</p> <p>2 Q And those -- which -- made up by</p> <p>3 whom?</p> <p>4 A Mary Ann Boyer, Ricky Smothers.</p> <p>5 I don't recall. It was a four or five</p> <p>6 person, six-person interview.</p> <p>7 Q Was --</p> <p>8 A QA manager, logistics manager. I</p> <p>9 forget all the names. Mark Samulotscki.</p> <p>10 Q Was Melvin Hutchins one of the</p> <p>11 people?</p> <p>12 A Yes, ma'am.</p> <p>13 Q Do you remember about how many</p> <p>14 people it was?</p> <p>15 A It was a full day of interviews,</p> <p>16 five or six. I don't recall exactly how</p> <p>17 many.</p> <p>18 Q Did you interview face to face</p> <p>19 with each individual or --</p> <p>20 A Yes, ma'am. Face to face</p> <p>21 individually.</p> <p>22 Q All right. Let me finish the</p> <p>23 question because -- or did you have any</p>	<p style="text-align: right;">16</p> <p>1 will give you that also. I don't have but</p> <p>2 one copy.</p> <p>3 MS. SWAIN: Okay. Can I look at</p> <p>4 it before you show it to him?</p> <p>5 MS. ROBERTSON: Huh?</p> <p>6 MS. SWAIN: Can I take a quick</p> <p>7 look at it before you show it to him?</p> <p>8 MS. ROBERTSON: Sure.</p> <p>9 Absolutely.</p> <p>10 MS. SWAIN: I think this is</p> <p>11 part -- excuse me -- part of a document</p> <p>12 as opposed to the entire document.</p> <p>13 MS. ROBERTSON: All right. See</p> <p>14 if I can make it complete. Would that</p> <p>15 help?</p> <p>16 MS. SWAIN: I think this is,</p> <p>17 like, section four and there should be</p> <p>18 --</p> <p>19 MS. ROBERTSON: See if that's</p> <p>20 part of it. We will put it all together</p> <p>21 and staple it.</p> <p>22 MS. SWAIN: This looks like the</p> <p>23 same type of document for another time</p>

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<p>17</p> <p>1 period.</p> <p>2 MS. ROBERTSON: Well --</p> <p>3 MS. SWAIN: Oh, okay. So it is</p> <p>4 -- okay.</p> <p>5 MS. ROBERTSON: Because I --</p> <p>6 yeah. What -- that's not using --</p> <p>7 MS. SWAIN: Yeah.</p> <p>8 MS. ROBERTSON: Okay.</p> <p>9 MS. SWAIN: It does -- I does</p> <p>10 note it on this. It says goal setting</p> <p>11 document on it.</p> <p>12 MS. ROBERTSON: Okay.</p> <p>13 (Plaintiff's Exhibit Number</p> <p>14 1 was marked for identification</p> <p>15 and attached to the deposition.)</p> <p>16 BY MS. ROBERTSON:</p> <p>17 Q Plaintiff's Exhibit Number 1, for</p> <p>18 the record, the second page of the document</p> <p>19 has a sticker on it. Will you take a look</p> <p>20 at that, please, sir.</p> <p>21 A Okay.</p> <p>22 Q And see if that helps you with</p> <p>23 your job duties or refreshes your memory</p>	<p>19</p> <p>1 the goals here, maintain FTE, full-time</p> <p>2 employee count. Minimize turnover.</p> <p>3 Q Well, let's -- let's start with</p> <p>4 that one. What does that mean?</p> <p>5 A Keep the -- keep the employees</p> <p>6 hired. If there's turnover, then hire back</p> <p>7 employees.</p> <p>8 Q Was there a problem at -- at</p> <p>9 Dothan Flavor House keeping a full</p> <p>10 complement of full-time employees.</p> <p>11 A Not -- not a problem that I know</p> <p>12 of. It was just general turnover. So</p> <p>13 basically when there was turnover, not</p> <p>14 allowing that turnover to -- allowing the</p> <p>15 position to be unmanned for a long period of</p> <p>16 time, making sure they were filled back.</p> <p>17 Q Okay. What else?</p> <p>18 A Training process, general</p> <p>19 training process for hourly and salary</p> <p>20 employees.</p> <p>21 Q What kind of training were you</p> <p>22 responsible for at Flavor House?</p> <p>23 A Salary to -- it was mainly</p>
<p>18</p> <p>1 about what your job duties were.</p> <p>2 A These were specific goals set.</p> <p>3 This is not an all encompassing job</p> <p>4 description, no.</p> <p>5 Q Yes, sir. I understand that.</p> <p>6 And I -- and I -- I didn't represent that it</p> <p>7 was.</p> <p>8 A Okay.</p> <p>9 Q It -- but it looks like to me</p> <p>10 that it may suggest at least some of the</p> <p>11 areas that you were responsible for as the</p> <p>12 HR manager at Flavor House; is that correct?</p> <p>13 A That's correct.</p> <p>14 Q And I thought maybe it would help</p> <p>15 you for us to discuss those areas that</p> <p>16 you're responsible for.</p> <p>17 A Okay.</p> <p>18 Q Okay. And does it help you?</p> <p>19 A Yes.</p> <p>20 Q Okay. Can you give me a little</p> <p>21 more specifics now as to what your job</p> <p>22 duties were at Flavor House?</p> <p>23 A Well, let me see. You can go by</p>	<p>20</p> <p>1 supervisory training, general supervisory</p> <p>2 skills, employee training. We had safety</p> <p>3 training. It was delegated to a safety</p> <p>4 manager. Again, not having the training</p> <p>5 schedule, I don't know specifically what we</p> <p>6 trained during that period I was there.</p> <p>7 Q Did -- was the training on some</p> <p>8 sort of schedule? In other words, like you</p> <p>9 said, general supervisory skills, was there</p> <p>10 a package or a scheduled kind of training?</p> <p>11 A There were training topics</p> <p>12 scheduled monthly, bimonthly, quarterly,</p> <p>13 yes.</p> <p>14 Q And -- and, like, do you remember</p> <p>15 the topics that were in those --</p> <p>16 A No, I do not.</p> <p>17 Q -- packages? What -- did you</p> <p>18 teach the classes yourself?</p> <p>19 A I don't recall teaching the</p> <p>20 classes myself, no.</p> <p>21 Q Who would teach the classes?</p> <p>22 A Depending on what training it</p> <p>23 was, specialists in that field, whether it</p>

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<p style="text-align: right;">21</p> <p>1 was a supervisor or a safety person --</p> <p>2 Q Well, I'm talking about --</p> <p>3 A And an outside counsel or outside</p> <p>4 person.</p> <p>5 Q I'm sorry. I'm talking about</p> <p>6 specifically the general supervisory skills</p> <p>7 classes. It sounds like --</p> <p>8 A Some of those were taught by</p> <p>9 myself. Some of them were taught by outside</p> <p>10 sources.</p> <p>11 Q All right. And do you remember</p> <p>12 which ones you taught?</p> <p>13 A Not without seeing the schedule,</p> <p>14 no, ma'am.</p> <p>15 Q Did you teach any sexual</p> <p>16 harassment training?</p> <p>17 A I don't recall if I taught it or</p> <p>18 if it was taught by someone else. It would</p> <p>19 be on the sign-in sheets.</p> <p>20 Q Was it taught while you were</p> <p>21 there?</p> <p>22 A I don't recall if it was. It</p> <p>23 would be in the training schedule if it was.</p>	<p style="text-align: right;">23</p> <p>1 would trigger one being offered or -- or --</p> <p>2 or required to take anti-sexual harassment</p> <p>3 training at Flavor House?</p> <p>4 A Sexual harassment training --</p> <p>5 MS. SWAIN: I'm going to object.</p> <p>6 A -- is part of our training</p> <p>7 process.</p> <p>8 Q Okay.</p> <p>9 A There was annual training that</p> <p>10 was listed as annual training.</p> <p>11 Specifically, an incident. If there was an</p> <p>12 instance involved, we may have retrained,</p> <p>13 but it would have been part of our original</p> <p>14 training process.</p> <p>15 Q You said you were there from</p> <p>16 October to October --</p> <p>17 A October to December.</p> <p>18 Q Okay. So if there had been some</p> <p>19 training, it would have been within that</p> <p>20 period of time; right?</p> <p>21 A There should have been annual</p> <p>22 training, yes.</p> <p>23 Q What qualified you to give that</p>
<p style="text-align: right;">22</p> <p>1 Q For what period of time were you</p> <p>2 there?</p> <p>3 A October of '05 until December of</p> <p>4 '06.</p> <p>5 Q And you don't recall whether</p> <p>6 your -- you personally taught a sexual</p> <p>7 harassment or anti-sexual harassment course?</p> <p>8 A Not from memory, no, ma'am.</p> <p>9 There would be a training record there if it</p> <p>10 was taught, yes.</p> <p>11 Q All right. And did you have</p> <p>12 any -- while you were there, did you have</p> <p>13 videos or anything, tools to use for that</p> <p>14 particular kind of training?</p> <p>15 A I -- I don't recall.</p> <p>16 Q You don't recall whether or not</p> <p>17 you had that kind of -- those kind of tools?</p> <p>18 A Not from memory, no, ma'am.</p> <p>19 Q Under what circumstances would</p> <p>20 one receive anti-sexual harassment training</p> <p>21 at Flavor House?</p> <p>22 A An individual or as a group?</p> <p>23 Q I'm talking about at -- what</p>	<p style="text-align: right;">24</p> <p>1 training?</p> <p>2 A My previous experience, my</p> <p>3 previous training. I've had various</p> <p>4 training courses, supervisory training</p> <p>5 courses. Train -- the trainer courses</p> <p>6 throughout my career.</p> <p>7 Q Did you have any such training at</p> <p>8 Flavor House?</p> <p>9 A Specific to sexual harassment</p> <p>10 training?</p> <p>11 Q Yes.</p> <p>12 A Within our supervisory training</p> <p>13 program, I believe there was sexual</p> <p>14 harassment training. Whether I received</p> <p>15 that specifically separate, I don't recall.</p> <p>16 Q Would there be something in your</p> <p>17 personnel file that would indicate whether</p> <p>18 you received it or not?</p> <p>19 MS. SWAIN: Objection.</p> <p>20 A I don't recall if our training</p> <p>21 records were kept separately or in our</p> <p>22 files.</p> <p>23 Q Well, when you say your "training</p>

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<p style="text-align: right;">25</p> <p>1 records," would they have been kept by 2 individuals, named? Say Ann Robertson, 3 would she have a training file? 4 A I don't recall how -- there was a 5 record kept. I don't recall how it was -- 6 it was -- 7 Q So -- but what I'm asking you, 8 sir, is if it wasn't put in the personnel 9 file, some documentation that you received 10 the training, correct, would it have been 11 kept in a separate file with that person's 12 name on it? 13 A It could have. 14 MS. SWAIN: Objection. 15 A It could have, yes, ma'am. I do 16 not recall. 17 Q Well, where else would it have 18 been kept if it wasn't kept in the personnel 19 file? How -- how else would it have been 20 kept? 21 MS. SWAIN: Objection. 22 A I don't know. It's a speculation 23 question. I don't know the answer to that.</p>	<p style="text-align: right;">27</p> <p>1 training on each specific topic? 2 MS. SWAIN: Objection. 3 A I -- I don't know how to answer 4 that. Again, relative to what the topics 5 were for that year would have been trained. 6 Q Well, you said there was annual 7 training, and what I'm trying to find out is 8 are you saying that for each year there was 9 repetitive -- the same topics taught? 10 A Not necessarily the same topics. 11 Q That's what I'm asking you. How 12 would you know if a person had received the 13 -- say it was time -- 14 A By the training record. 15 Q Okay. So how would you check the 16 training record if you have no idea where 17 they kept it? 18 MS. SWAIN: Objection. 19 Q Sir? 20 A I don't recall how it was kept. 21 Q Well, do you -- 22 A I would have -- I would have 23 checked training records to see if training</p>
<p style="text-align: right;">26</p> <p>1 Q Well, I mean, you were -- weren't 2 you in charge of -- of keeping records of 3 these training sessions? 4 A There was a record, a sign-in 5 sheet, for each training. Now, how that was 6 filed, I'm not aware. I don't recall if it 7 was filed individually or in a training file 8 or in a personnel file. I don't recall how 9 it was filed, no. 10 Q Well, how did you decide whether 11 a person needed that kind of training? Did 12 you not need to know whether or not they had 13 had it before? 14 MS. SWAIN: Objection. 15 A We had an annual training 16 program. 17 Q A what? 18 A An annual training program that 19 had topics listed. Everyone received 20 training in specific courses throughout the 21 year, the entire plant. 22 Q So you're telling for -- telling 23 me for every year there would have been</p>	<p style="text-align: right;">28</p> <p>1 was needed for an individual or to ensure 2 they had training. 3 Q Uh-huh. 4 A An annual training program, we go 5 by the topics and we teach those topics. 6 Q Okay. And -- and -- but you 7 don't recall how you would check? 8 A I would look at the training 9 sign-in sheets. 10 Q Okay. But you don't recall where 11 they were kept or -- 12 A I don't recall how they were 13 kept, if individual or in a training file. 14 Do not know. 15 Q Is there something that would 16 refresh your memory? 17 A Probably not. 18 Q There's nothing that would 19 refresh your memory? 20 MS. SWAIN: Objection. He's 21 answered that. 22 Q Can you explain to me why you 23 would have no memory of that even if I could</p>

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<p style="text-align: right;">29</p> <p>1 produce, like, say, a personnel file with a 2 training record in it?</p> <p>3 MS. SWAIN: Objection.</p> <p>4 A I've had multiple jobs and we 5 store files multiple ways. So as an HR 6 manager, I've had various companies that 7 store files in different ways. I don't 8 recall specifically how Flavor House stores 9 their training records, no.</p> <p>10 Q No. I'm asking -- and there's 11 nothing that would refresh your memory?</p> <p>12 A No.</p> <p>13 Q Okay. What else did you do 14 besides training?</p> <p>15 A Disciplinary actions.</p> <p>16 Q Before we go on to disciplinary 17 actions, tell me did you do any training on 18 how to investigate anti -- investigate a 19 sexual or racial or what have you harassment 20 complaint?</p> <p>21 A I don't recall.</p> <p>22 Q Anything that would -- would 23 refresh your memory on that?</p>	<p style="text-align: right;">31</p> <p>1 MS. SWAIN: Objection.</p> <p>2 A I don't understand that question.</p> <p>3 Q Well, if there was a complaint of 4 sexual harassment that did not come directly 5 to you but came to a supervisor, who would 6 -- would that person decide which people to 7 take the written statements from?</p> <p>8 MS. SWAIN: Objection.</p> <p>9 A Anyone could report harassment to 10 a member of management, supervision, myself, 11 or another member of management, whoever 12 they were comfortable reporting it to. And 13 at that point, it would be investigated by 14 that process.</p> <p>15 Q Yes, sir. That was a good 16 answer, but it wasn't an answer to the 17 question I asked. My question was: If the 18 report came to someone other than you, who 19 decided which statements would be -- or who 20 would get -- be asked to give statements?</p> <p>21 MS. SWAIN: Objection.</p> <p>22 A I don't know how to answer that 23 question.</p>
<p style="text-align: right;">30</p> <p>1 A The training topics in our 2 training schedule. If it was there, then it 3 was taught if there's a sign-in sheet.</p> <p>4 Q Well, did you have a methodology 5 for -- for investigating such a complaint?</p> <p>6 A Yes.</p> <p>7 Q Would you tell me what it was?</p> <p>8 MS. SWAIN: Objection.</p> <p>9 A I collected the documents from 10 individuals and investigated those 11 documents.</p> <p>12 Q What do you mean you collected 13 the documents?</p> <p>14 A Receive written statements from 15 anyone involved, question those individuals 16 about the situation, collect any additional 17 information, interview additional applicants 18 or additional persons that were named in the 19 investigation.</p> <p>20 Q Okay. When you would collect the 21 documents of -- or the written statements, 22 who would get the -- who would decide who 23 would get the written statements?</p>	<p style="text-align: right;">32</p> <p>1 Q Okay. Well, you said you would 2 collect the documents and that documents 3 would include written statements of the 4 people that was -- that knew something about 5 the complaint; is that right?</p> <p>6 A Yes.</p> <p>7 Q Who would decide which people 8 gave the written statements?</p> <p>9 MS. SWAIN: Objection.</p> <p>10 A I don't see how anyone could 11 decide who gives a written statement.</p> <p>12 Q Did you hold up a banner, We've 13 had a sexual harassment complaint; anybody 14 who wants to come give a written statement, 15 please do it? Is that how you got your 16 written statements?</p> <p>17 A If -- if -- if someone brought a 18 claim of harassment to me --</p> <p>19 Q Yeah.</p> <p>20 A -- I would ask for personnel or 21 individuals involved that I should interview 22 that had relevance to that from the person 23 bringing the accusation.</p>

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<p style="text-align: right;">33</p> <p>1 Q Okay.</p> <p>2 A And from that, we would</p> <p>3 investigate those persons, receive their</p> <p>4 statements if they knew anything of the</p> <p>5 situation. So, again, it's -- we didn't</p> <p>6 broadcast that there had been a sexual</p> <p>7 harassment claim of any sort or any</p> <p>8 harassment claim.</p> <p>9 Q Well, did -- but you told me at</p> <p>10 one point that you would collect the</p> <p>11 documents which would usually include the</p> <p>12 written statements of people that had some</p> <p>13 knowledge of the complaint.</p> <p>14 A Correct, that had been identified</p> <p>15 either by the person bringing the complaint</p> <p>16 or by a supervisor who was aware that the</p> <p>17 person is bringing the complaint.</p> <p>18 Q Okay. So that's what I'm saying.</p> <p>19 So the supervisor would get the statements</p> <p>20 and bring them to you; right?</p> <p>21 MS. SWAIN: Objection.</p> <p>22 A That could happen, yes. Not</p> <p>23 necessarily in that order.</p>	<p style="text-align: right;">35</p> <p>1 he kept the records of -- of -- of -- of</p> <p>2 investigating a sexual harassment</p> <p>3 complaint. He said he would take notes</p> <p>4 of the people he interviewed.</p> <p>5 Q Did you ever -- did you ever have</p> <p>6 a sexual harassment complaint?</p> <p>7 A I would have to look at my notes</p> <p>8 to see. I don't recall yes or no.</p> <p>9 Q Okay. Well, let me ask you this.</p> <p>10 Let's assume that this is some kind of</p> <p>11 grievance or some kind of complaint that may</p> <p>12 or may not have been sexual harassment.</p> <p>13 Would it be investigated the same way?</p> <p>14 MS. SWAIN: Objection.</p> <p>15 A Any complaint brought forward,</p> <p>16 any statement, was investigated, yes.</p> <p>17 Q Okay. Well, for instance, in the</p> <p>18 case where Linda alleged that Frank Williams</p> <p>19 cursed her and threw a bag of cans, not at</p> <p>20 her but threw it, and was yelling and</p> <p>21 always, you know, acting out, did you</p> <p>22 interview the witnesses involved in that --</p> <p>23 that allegation?</p>
<p style="text-align: right;">34</p> <p>1 Q And then what would you do?</p> <p>2 A We would investigate the</p> <p>3 complaint.</p> <p>4 Q Okay. And how would you</p> <p>5 investigate the complaint?</p> <p>6 A Take the statements and interview</p> <p>7 the individuals.</p> <p>8 Q All right. Did you make notes of</p> <p>9 the interviews of the individuals?</p> <p>10 A Yes.</p> <p>11 Q Where were they -- where are</p> <p>12 they?</p> <p>13 MS. SWAIN: Objection.</p> <p>14 A Notes are either kept in a file</p> <p>15 --</p> <p>16 Q I'm not talking about</p> <p>17 hypothetically. I'm talking about in --</p> <p>18 when you were doing it in -- at Flavor</p> <p>19 House.</p> <p>20 MS. SWAIN: Are you talking about</p> <p>21 on a specific occasion?</p> <p>22 MS. ROBERTSON: I'm talking</p> <p>23 about -- no. I'm just talking about how</p>	<p style="text-align: right;">36</p> <p>1 MS. SWAIN: Objection.</p> <p>2 A I would have taken the</p> <p>3 statements -- any statement that I had, I</p> <p>4 would have interviewed the persons</p> <p>5 identified, yes.</p> <p>6 Q Okay. And you would have taken</p> <p>7 notes of those -- those --</p> <p>8 A Yes.</p> <p>9 Q Where are those notes? Where did</p> <p>10 you keep those notes?</p> <p>11 A Those notes were filed in my</p> <p>12 desk.</p> <p>13 Q Okay.</p> <p>14 A Separate file.</p> <p>15 Q A separate file in your desk?</p> <p>16 A Yes, ma'am. Personal notes taken</p> <p>17 during an investigation.</p> <p>18 Q And were they -- how -- how did</p> <p>19 you keep them, like alphabetically according</p> <p>20 to the complaint and alphabetically</p> <p>21 according to the --</p> <p>22 A I don't recall if it was by the</p> <p>23 person or by the date that it occurred in</p>

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<p style="text-align: right;">37</p> <p>1 the -- in the -- it was in a desk drawer. 2 It may have been by the incident name. It 3 might have been by the -- either the 4 person's name or by the date. I believe I 5 kept those chronological by the date of the 6 occurrence. 7 Q And that would be the only 8 institutional memory of, say, a complaint 9 against, let's just say, Joe Blow, would be 10 this -- this number of notes in your desk? 11 MS. SWAIN: Objection. 12 A There would be written 13 documentation of the complaint -- 14 Q Yeah, but where would it -- 15 A -- in the -- in the personnel 16 file. 17 Q Okay. Well -- 18 A Because they had filed a 19 complaint. 20 Q In whose personnel file? 21 A In the individual's. 22 Q So that would be the 23 institutional memory?</p>	<p style="text-align: right;">39</p> <p>1 file. 2 Q Okay. And the only -- the only 3 institutional memory would be in the 4 personnel file of the complainant? 5 MS. SWAIN: Objection. 6 Q Or the -- the person against whom 7 the complaint was made? 8 A Any -- any action taken would be 9 in the personnel file regardless of who was 10 involved in the action, if there was action 11 taken. 12 Q What if there was no action 13 taken? 14 A There's no action taken? The 15 statements would go in the personnel files 16 showing -- 17 Q Of whom? 18 A Of whoever the statement was -- 19 whoever wrote the statement, the copy would 20 be in the personnel file. 21 Q So let me get this straight. 22 There's a complaint of, say, sexual 23 harassment against Joe Blow in 19 -- I</p>
<p style="text-align: right;">38</p> <p>1 MS. SWAIN: Okay. 2 A I'm not sure an institutional 3 memory, what that means. 4 Q Well, obviously you are no 5 there -- longer there; right? 6 A I'm no longer at Flavor House, 7 no. 8 Q Okay. And -- and so if -- if 9 somebody else complained about Joe Blow, you 10 know, throwing acid in their face, where 11 would be the institutional memory that he 12 had done that before? 13 MS. SWAIN: Objection. 14 Q Because you're not there to 15 remind them, oh, remember he -- like last 16 year he threw acid. 17 A Again, my -- my -- my -- my 18 personal notes on the investigation are not 19 necessarily the outcome of the 20 investigation. It's my notes that I took. 21 The decisions that were made, any 22 disciplinary or nondisciplinary, any actions 23 that were taken, were part of the personnel</p>	<p style="text-align: right;">40</p> <p>1 mean -- excuse me -- 2005. And there's 2 statements taken by Jane Doe, Carol Smo, and 3 others, and there's inconclusive proof that 4 Joe -- Joe Blow did sexual harassment. All 5 right? What would happen would be Jane 6 Doe's statement would go in her personnel 7 file? 8 MS. SWAIN: Objection. 9 A I believe individual statements 10 were put into individual files. There may 11 have been -- the whole incident may have 12 been put into individual files. I don't 13 recall. But they -- the statements would 14 have been in the personnel files, either in 15 the -- in the person initially bringing the 16 complaint, maybe the entire -- all 17 statements there, perhaps. I don't recall. 18 But the individual statements were kept in 19 the individual personnel file. 20 Q And my question is: Then how 21 would one after you left, if somebody 22 complained about Joe Blow in December of 23 '07, know that he had had prior complaints</p>

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<p style="text-align: right;">41</p> <p>1 that -- that -- that could not be proven one 2 way or the other?</p> <p>3 MS. SWAIN: Objection.</p> <p>4 A Statements would have been in the 5 personnel files.</p> <p>6 Q Of whom because you're not 7 sure --</p> <p>8 A The person making the statement.</p> <p>9 Q You're not sure whether they -- 10 they would put it -- why would you put it in 11 the person against whom the allegations had 12 not --</p> <p>13 A There would have been a statement 14 from the person that the allegations were 15 made against as well. So, therefore, a copy 16 would have been in their personnel file as 17 well.</p> <p>18 Q Tell me what the -- what the 19 reason or the purpose for that particular 20 method is.</p> <p>21 A Because many times you have 22 instances where you have multiple instances 23 over a period of time that lead to a</p>	<p style="text-align: right;">43</p> <p>1 Q No. What I'm talking about is 2 you -- you get a written statement from Joe 3 Blow. You question Joe Blow and not only is 4 his written statement incorrect or 5 inaccurate, it's incomplete.</p> <p>6 A How do I know a statement is 7 incomplete? It's a statement.</p> <p>8 Q Well, after you interviewed him, 9 you determined that it was incomplete 10 because he told you some more stuff. That's 11 what I'm saying. Then how do you -- how did 12 you document that?</p> <p>13 MS. SWAIN: Objection.</p> <p>14 Q The additional stuff, the 15 misstatements, whatever.</p> <p>16 A The original statement is a 17 statement. My investigative notes are 18 separate from that initial statement.</p> <p>19 Q But as I'm saying, suppose you 20 bring the person in and over the course of 21 your interviewing him, it turns out that -- 22 that he has additional information. He has 23 different information that you learned that</p>
<p style="text-align: right;">42</p> <p>1 perpetual problem. Therefore, you want 2 record of that problem as it's happened in 3 the past. One singular instance may not 4 negate action. Multiple instances over a 5 period of time may require action.</p> <p>6 Q Okay. Be you're not -- you're 7 not sure that that -- that it's -- that the 8 statements are put in each person's file or 9 are you?</p> <p>10 MS. SWAIN: Objection.</p> <p>11 A I don't recall.</p> <p>12 Q Now, tell me, do you know what 13 happened to your -- your notes where you 14 interviewed the people that gave the written 15 statements?</p> <p>16 A I do not know.</p> <p>17 Q Can you tell me why those notes 18 were not maintained in -- in whatever 19 fashion everybody else -- all the other 20 stuff was maintained in?</p> <p>21 A They would have been filed either 22 chronologically or by the person's name in 23 that investigations file.</p>	<p style="text-align: right;">44</p> <p>1 is pertinent to the investigation. Why 2 would you not maintain that also in his 3 personnel file?</p> <p>4 MS. SWAIN: Objection.</p> <p>5 A The initial statement was 6 maintained in the file.</p> <p>7 Q Well, how --</p> <p>8 A If they give additional 9 statements, they would be maintained in the 10 file as well.</p> <p>11 Q Well, how do you -- how did they 12 go -- how did the people that would gather 13 these written statements get the statements?</p> <p>14 MS. SWAIN: Objection.</p> <p>15 A I don't know the answer to that.</p> <p>16 Q I mean, would they sit down with 17 a series of questions and ask them and tell 18 them to put the stuff in there? Would they 19 say there's been an allegation that thus and 20 so was done; tell us what you know about 21 that?</p> <p>22 A From my recollection, anyone that 23 had a statement to give was given the form</p>

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<p style="text-align: right;">45</p> <p>1 and told to complete that -- to write their 2 statement. There was no questioning in the 3 statement -- statement process. It was 4 collection of the statements. 5 Q Well, I mean, I'm working on the 6 line. You walk up to me and say, We think 7 you have information about something; write 8 a statement. Is that what they would do? 9 MS. SWAIN: Objection. 10 Q I mean, what was done to inform 11 the person about what they should write the 12 statement? 13 MS. SWAIN: Objection. 14 A They weren't told to write a 15 statement unless they offered to write a 16 statement. We never asked for additional 17 statements unless they were identified as 18 someone who would have a statement. If a 19 person bringing a complaint mentioned John, 20 Jane, and Mary, we would go to John, Jane, 21 and Mary and say, Would you write a 22 statement about what you saw? They did not 23 have to write a statement. It was at</p>	<p style="text-align: right;">47</p> <p>1 were asked them -- for them to address? 2 A Other than were you aware that an 3 incident happened? Please write your 4 statement. 5 Q Okay. 6 A They were given no direction of 7 what happened, no. 8 Q All right. Now, in the case -- 9 I'm using the case involving Linda and Frank 10 Williams, that one. It's kind of involved 11 in this case. 12 A The case, the specific incident? 13 Q The one where Frank Williams, you 14 know, supposedly threw the cans and was 15 cursing her and yelling and -- 16 A Okay. 17 Q All right. Did -- do you 18 remember the statement that Frank Williams 19 gave? 20 A Not from memory, no. 21 Q Do you remember if he admitted to 22 doing any of that, the things she said he 23 did.</p>
<p style="text-align: right;">46</p> <p>1 their -- if they wanted to, they could. If 2 they didn't, they didn't. 3 Q That's what I'm getting at. So 4 if -- in the instance where Ms. Thornton 5 complained that he yelled and screamed and 6 cursed and threw cans and generally pitched 7 a fit, and she said, I know X, Y, and Z were 8 in -- in range. I don't know what they saw 9 or what they heard, but they should have 10 heard or seen something. 11 A Uh-huh. 12 Q You would walk up to the person 13 and say, Here's a written form. If you -- 14 did -- Linda said you saw something that 15 Frank Williams did. Would you please write 16 a statement? Is that what -- basically what 17 would happen? 18 MS. SWAIN: Objection. 19 A If someone bringing a complaint 20 mentioned certain people or mentioned names, 21 I would ask those persons to give a 22 statement of what events they saw, yes. 23 Q Okay. And -- but no specifics</p>	<p style="text-align: right;">48</p> <p>1 MS. SWAIN: Are you talking about 2 in his -- whether he admitted it in his 3 statement? 4 MS. ROBERTSON: Yeah. 5 A I don't -- I don't recall. 6 Again, from memory, I don't recall. 7 Q Okay. 8 MS. ROBERTSON: Let's take a 9 break I need to get the documents. 10 THE VIDEOGRAPHER: We are off at 11 9:41. 12 (Whereupon, a short break was taken.) 13 THE VIDEOGRAPHER: This the 14 beginning of tape 2. The time is 15 9:53 a.m. We're back on. 16 (Plaintiff's Exhibit Number 17 2 was marked for identification 18 and attached to the deposition.) 19 BY MS. ROBERTSON: 20 Q Plaintiff's Exhibit Number 2. We 21 were -- I was referring to that statement a 22 few minutes ago before we took a break. 23 Have you ever -- have you seen that?</p>

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<p style="text-align: right;">49</p> <p>1 (Brief pause.)</p> <p>2 A I believe this was Frank's</p> <p>3 statement. Yes. I -- I -- I'm sure I saw</p> <p>4 this at the time of the investigation.</p> <p>5 Q His statement about the incident</p> <p>6 about the continually describing about the</p> <p>7 yelling, the screaming, the cursing, and</p> <p>8 throwing cans?</p> <p>9 MS. SWAIN: Objection.</p> <p>10 A The June 14th incident, yes.</p> <p>11 Q Now, tell me where you see that</p> <p>12 he addresses any of those allegations, for</p> <p>13 instance, the cursing at her.</p> <p>14 MS. SWAIN: Objection.</p> <p>15 A This is Frank's statement. I</p> <p>16 don't see him saying he cursed at her in</p> <p>17 this statement, no.</p> <p>18 Q Well, do you see where he</p> <p>19 addresses it at all? Does he deny it?</p> <p>20 A I don't see that he denies</p> <p>21 cursing.</p> <p>22 Q He just doesn't address it;</p> <p>23 right?</p>	<p style="text-align: right;">51</p> <p>1 A I'm sorry. Repeat that question.</p> <p>2 Q I said would you have ask --</p> <p>3 thought the supervisor would have asked him</p> <p>4 to address those allegations, whether he</p> <p>5 agreed with them, denied them, or had some</p> <p>6 explanation for agreeing with them?</p> <p>7 A Are you asking about the</p> <p>8 statement?</p> <p>9 Q Yeah.</p> <p>10 A Would a supervisor have asked</p> <p>11 Frank about the statement? No. This is</p> <p>12 just a statement given. There's no</p> <p>13 questions asked at the statement process.</p> <p>14 Q So -- so he -- he just said,</p> <p>15 Describe the incident involving you and</p> <p>16 Linda Thornton?</p> <p>17 A Correct. Please write a</p> <p>18 statement concerning this incident on this</p> <p>19 date.</p> <p>20 Q Okay.</p> <p>21 A That would have been the gist of</p> <p>22 it.</p> <p>23 Q Now, did you have a conversation</p>
<p style="text-align: right;">50</p> <p>1 A This is his statement of what</p> <p>2 happened at the time.</p> <p>3 Q Is it -- does it appear to be</p> <p>4 true?</p> <p>5 MS. SWAIN: Objection.</p> <p>6 A I don't decide who -- what --</p> <p>7 what's -- what's true on the statements</p> <p>8 until -- it's just a statement. Until the</p> <p>9 investigation is concluded, any --</p> <p>10 Q Well --</p> <p>11 A -- any additional notes that I</p> <p>12 made. And then we determine the outcome of</p> <p>13 the -- of the investigation.</p> <p>14 Q I understand. But if -- if Frank</p> <p>15 -- if Linda Thornton had accused Frank of</p> <p>16 cursing repeatedly at her, yelling,</p> <p>17 hollering and throwing cans, would you have</p> <p>18 expected a person -- the supervisor to at</p> <p>19 least have asked him to address those</p> <p>20 issues?</p> <p>21 MS. SWAIN: Objection.</p> <p>22 Q Whether he agreed with them,</p> <p>23 denied them, what have you?</p>	<p style="text-align: right;">52</p> <p>1 with Frank Williams later about that</p> <p>2 statement?</p> <p>3 A I'm sure I did.</p> <p>4 Q Do you remember having it?</p> <p>5 A Not from memory specifically, no.</p> <p>6 Q What would refresh your memory?</p> <p>7 A Reading over the statement. I</p> <p>8 remember the incident. I don't remember the</p> <p>9 individual conversations I had during the</p> <p>10 investigation, no.</p> <p>11 (Plaintiff's Exhibit Number</p> <p>12 3 was marked for identification</p> <p>13 and attached to the deposition.)</p> <p>14 BY MS. ROBERTSON:</p> <p>15 Q Okay. Let me show you what's</p> <p>16 been marked as Plaintiff's Exhibit Number 3</p> <p>17 and ask you to take a look at this.</p> <p>18 MS. SWAIN: Is this your --</p> <p>19 MS. ROBERTSON: Yeah. And the</p> <p>20 date it was served on the defendant or</p> <p>21 the respondent.</p> <p>22 Q Now, the Flavor House in Dothan</p> <p>23 is at 2700 Horace Shepard Road; right?</p>

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<p style="text-align: right;">53</p> <p>1 A I believe so, yes.</p> <p>2 Q Did you ever see Plaintiff's</p> <p>3 Exhibit Number 3 or were you aware that it</p> <p>4 even existed?</p> <p>5 A I believe we did receive a copy</p> <p>6 of this.</p> <p>7 Q Okay. And what did you do with</p> <p>8 it when you received it?</p> <p>9 MS. SWAIN: Objection.</p> <p>10 A When we receive complaints, I</p> <p>11 forward those on to our corporate counsel.</p> <p>12 Q Anything else that you do?</p> <p>13 A Anything I would have done would</p> <p>14 have been at the direction of the corporate</p> <p>15 counsel.</p> <p>16 Q You do -- there's a piece of</p> <p>17 paper that comes with that thing telling you</p> <p>18 to preserve all the pertinent documents and</p> <p>19 not to spoil them and do away with them; is</p> <p>20 that right?</p> <p>21 A I don't recall what came with</p> <p>22 this. This is just one document.</p> <p>23 Q Look at the charge and -- and see</p>	<p style="text-align: right;">55</p> <p>1 of those notes, anyone other than the HR</p> <p>2 manager. I don't know if anyone else is</p> <p>3 aware of those. If there's any notes that</p> <p>4 would have been pulled out, I -- I don't</p> <p>5 know where they -- where they would have</p> <p>6 been -- they were in the desk at the time I</p> <p>7 was working there, yes.</p> <p>8 Q Was there any investigation done</p> <p>9 of that charge when Flavor House received</p> <p>10 it?</p> <p>11 A I don't recall the specific</p> <p>12 investigation done.</p> <p>13 Q I'm not asking about the</p> <p>14 specifics. I said was any done?</p> <p>15 A I don't recall what action we</p> <p>16 took on this charge. It would have been,</p> <p>17 again, at the direction of the corporate</p> <p>18 counsel.</p> <p>19 Q So you don't remember if there</p> <p>20 was any investigation?</p> <p>21 A I don't recall, no. I don't</p> <p>22 recall yes or no.</p> <p>23 Q Okay. So you don't have any</p>
<p style="text-align: right;">54</p> <p>1 if you don't see where it's discussed at</p> <p>2 length, this incident involving the yelling</p> <p>3 and the cursing and the throwing of cans.</p> <p>4 MS. SWAIN: Objection. Are you</p> <p>5 referring to the June 14th statement by</p> <p>6 Linda in here?</p> <p>7 MS. ROBERTSON: Yeah.</p> <p>8 A I see her statement, yes.</p> <p>9 Q Okay. What -- when you -- when</p> <p>10 you received the charge from -- about Linda</p> <p>11 Thornton did you do to preserve your</p> <p>12 personal notes or the notes that you took in</p> <p>13 your investigation of that incident so that</p> <p>14 it would be preserved for litigation, if</p> <p>15 necessary?</p> <p>16 MS. SWAIN: Objection.</p> <p>17 A All of my investigation notes are</p> <p>18 filed in my desk.</p> <p>19 Q So --</p> <p>20 A That's -- that's the only --</p> <p>21 Q Did you tell anybody about those</p> <p>22 notes in your desk when you received --</p> <p>23 A I don't know if anyone is aware</p>	<p style="text-align: right;">56</p> <p>1 independent knowledge of talking to Frank</p> <p>2 Williams about Plaintiff's Exhibit Number 2?</p> <p>3 A I'm sure I investigated and</p> <p>4 talked with the individuals. I don't recall</p> <p>5 the specific conversation, no.</p> <p>6 Q And would the conversation or</p> <p>7 notes concerning that conversation be</p> <p>8 included in your notes surrounding the</p> <p>9 investigation of Ms. Thornton's allegations?</p> <p>10 A All the notes for the 6/14</p> <p>11 incident would have been included in my</p> <p>12 notes in the desk.</p> <p>13 Q So -- so your notes concerning</p> <p>14 what Mr. Williams did or didn't say when you</p> <p>15 interviewed him would be in those notes?</p> <p>16 A Yes.</p> <p>17 MS. ROBERTSON: Off the record.</p> <p>18 (Whereupon, an</p> <p>19 off-the-record discussion was</p> <p>20 held.)</p> <p>21 BY MS. ROBERTSON:</p> <p>22 Q Well, what -- when you called</p> <p>23 Mr. Williams in to interview him, what would</p>

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<p style="text-align: right;">57</p> <p>1 have been the purpose of having him come in 2 there? 3 A During any investigation, the 4 purpose is to reiterate and bring out 5 anything that's in addition to the 6 statements to help make a decision as to 7 what occurred relative to the statements. 8 Q Do you recall whether you learned 9 anything new from Mr. Williams? 10 A I don't recall from memory, no. 11 Q Well, do you remember that 12 Mr. Williams was written up for cursing 13 Ms. Thornton? 14 MS. SWAIN: Objection. 15 A I believe there's documentation 16 on any write-ups that occurred. 17 Q Do you remember whether he 18 admitted to you that he did curse her? 19 A I don't recall if he admitted 20 that or not from memory, no. I don't recall 21 that. 22 Q Do you remember if he denied -- 23 A I don't recall, no.</p>	<p style="text-align: right;">59</p> <p>1 BY MS. ROBERTSON: 2 Q So it is unfortunate, is it not, 3 that we don't have those notes here today to 4 help you refresh your memory? 5 MS. SWAIN: Objection. 6 A The documentation that we have is 7 what we -- what is presented. 8 Q To get at the truth, it's 9 unfortunate that we do not have those 10 records that you made. 11 MS. SWAIN: Objection. Is there 12 a question for him? 13 Q Well, you were the one who 14 ultimately made the decision, right, as to 15 what to do about it? 16 A Based on the investigation, there 17 was a collaborative decision, more than 18 likely, made between myself and the general 19 manager, a recommendation for this very 20 action if necessary, yes. 21 Q Okay. And she -- are we talking 22 about Mary Ann Boyer? 23 A Yes, ma'am.</p>
<p style="text-align: right;">58</p> <p>1 Q Because if he denied it and you 2 have Ms. Thornton's representation and 3 several other witnesses, then not only did 4 he curse her; he lied, did he not? 5 MS. SWAIN: Objection. 6 A I can't assume that. I don't 7 recall. 8 Q Because you don't have any notes; 9 right? 10 A I had notes. I don't have them 11 now, no. 12 Q And -- and whatever out there is 13 producing all this memory loss from these 14 people and the deponents, you've got -- 15 apparently got a bad case of it; right? 16 MS. SWAIN: Objection. Ann, 17 that's not necessary. 18 A Excuse me? 19 Q I think -- I think -- 20 MS. ROBERTSON: Off the record. 21 (Whereupon, an 22 off-the-record discussion was 23 held.)</p>	<p style="text-align: right;">60</p> <p>1 Q She didn't sit in on any of these 2 interviews, did she? 3 A Not on the investigation process, 4 no. 5 Q Okay. So whatever you learned in 6 the investigation -- investigative process 7 would be the important thing; right? 8 A What I learned in the 9 investigation -- 10 Q In terms of -- 11 A -- process would have determined 12 the outcome of the investigation, yes. 13 Q Mr. Nance, why did you leave 14 Flavor House? 15 A I was asked to leave. 16 Q Did it have anything to do with 17 missing gift cards at or about the 18 Christmastime that were supposed to go to 19 employees but were missing? 20 MS. SWAIN: Objection. 21 A I -- not that I recall. I don't 22 know that. 23 Q You -- you -- you don't recall</p>

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<p style="text-align: right;">61</p> <p>1 whether stealing might have been implied or</p> <p>2 --</p> <p>3 A Stealing was never implied when I</p> <p>4 left Flavor House, no.</p> <p>5 Q All right. Was there a problem</p> <p>6 with missing gift cards?</p> <p>7 A There were two gift cards that</p> <p>8 were taken from the front office off of a --</p> <p>9 off of gift baskets. Once that was</p> <p>10 discovered, the baskets were moved into my</p> <p>11 office from a -- an extra office.</p> <p>12 Q When did that happen?</p> <p>13 A I don't recall.</p> <p>14 Q How long after were you fired?</p> <p>15 MS. SWAIN: Objection.</p> <p>16 A I don't recall the date I left</p> <p>17 employment. First of December.</p> <p>18 Q Well, what were the gift baskets</p> <p>19 for or the -- the gift basket?</p> <p>20 A Originally, the gift baskets were</p> <p>21 for drawings at the Peanut Festival. When</p> <p>22 the winners did not pick those gift baskets</p> <p>23 up, I believe we had two or three or four</p>	<p style="text-align: right;">63</p> <p>1 Q Were you given a severance</p> <p>2 package?</p> <p>3 A I believe there was a week or two</p> <p>4 of severance. I don't recall exactly what</p> <p>5 it was.</p> <p>6 Q Were you terminated -- were you</p> <p>7 involuntarily terminated or did they ask you</p> <p>8 to resign or -- with the -- with the --</p> <p>9 A I was involuntarily terminated.</p> <p>10 Q You were involuntarily terminated</p> <p>11 and you were given a severance package?</p> <p>12 A Yes, ma'am.</p> <p>13 Q Did you draw unemployment?</p> <p>14 A Yes, ma'am.</p> <p>15 Q Was there any investigation</p> <p>16 concerning these gift cards, these missing</p> <p>17 gift cards?</p> <p>18 A I believe we reviewed the tapes</p> <p>19 of the corridor leading to the office, but</p> <p>20 there was never any conclusive evidence of</p> <p>21 who -- who would have taken those because</p> <p>22 they were in the room for several weeks that</p> <p>23 they could have been taken. I don't recall</p>
<p style="text-align: right;">62</p> <p>1 left that were given away to the employees</p> <p>2 because the original persons that won the</p> <p>3 gift baskets did not pick those up.</p> <p>4 Q How much were these gift cards</p> <p>5 that were missing? How much were they for?</p> <p>6 A I don't recall. 20 or 25 dollars</p> <p>7 probably would be my guess.</p> <p>8 Q Well, what was the reason that</p> <p>9 you were -- that was given when they asked</p> <p>10 you to leave?</p> <p>11 A That my management style was</p> <p>12 not -- did not match with what Flavor House</p> <p>13 wanted at that time.</p> <p>14 Q And were you given any more</p> <p>15 specifics than that?</p> <p>16 A Specifically, some tasks that</p> <p>17 were not completed.</p> <p>18 Q Such as?</p> <p>19 A Such as the issuance of the new</p> <p>20 employee handbook.</p> <p>21 Q All right. What else?</p> <p>22 A I don't remember specific --</p> <p>23 specifically past that.</p>	<p style="text-align: right;">64</p> <p>1 who all was in and out of that vacant office</p> <p>2 at the time.</p> <p>3 Q Was -- was that office -- did it</p> <p>4 have -- was it locked, unlocked?</p> <p>5 A I don't recall.</p> <p>6 Q Did you leave an unpaid credit</p> <p>7 card bill that -- that was a Flavor House</p> <p>8 credit card?</p> <p>9 A I believe there was a bill, yes.</p> <p>10 Q And what was that credit card</p> <p>11 supposed to be used for?</p> <p>12 A That was used for company</p> <p>13 purchases.</p> <p>14 Q Such as?</p> <p>15 A Travel, miscellaneous HR</p> <p>16 expenses.</p> <p>17 Q And were you supposed to pay it</p> <p>18 or was Flavor House supposed to pay it?</p> <p>19 A I was responsible for paying that</p> <p>20 bill monthly.</p> <p>21 Q And so -- and why was it unpaid?</p> <p>22 Did you take the money and use it for</p> <p>23 something else?</p>

16 (Pages 61 to 64)

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<p style="text-align: right;">65</p> <p>1 A I don't recall having to pay that</p> <p>2 bill at the end when I left employment.</p> <p>3 Q Well, my question is: What was</p> <p>4 the reason you hadn't paid it at the time?</p> <p>5 A The credit card was current when</p> <p>6 I left. There may have been an outstanding</p> <p>7 balance beyond that.</p> <p>8 Q Were you ever asked to pay it</p> <p>9 back?</p> <p>10 A Pay it back or pay the bill?</p> <p>11 Q Pay the bill.</p> <p>12 A I don't recall being asked to pay</p> <p>13 the -- pay any monies back, no.</p> <p>14 Q Were you asked to pay the bill?</p> <p>15 A I don't recall being asked to pay</p> <p>16 the bill. I don't -- I don't recall.</p> <p>17 Q Was there any discussion about</p> <p>18 there being some irregularities with the --</p> <p>19 the bill?</p> <p>20 A Not to my knowledge, no.</p> <p>21 Q In other words, you're saying not</p> <p>22 with you?</p> <p>23 MS. SWAIN: Objection.</p>	<p style="text-align: right;">67</p> <p>1 Q All right. Do you recall what</p> <p>2 Mr. Williams said about whether or not he</p> <p>3 was throwing cans during the incident that</p> <p>4 Ms. Thornton describes in that exhibit?</p> <p>5 A I don't recall other than Frank's</p> <p>6 statement. From memory, no.</p> <p>7 Q And do you recall whether you</p> <p>8 asked any other witnesses whether or not</p> <p>9 they saw -- could see whether or not he was</p> <p>10 throwing cans?</p> <p>11 A Not from memory. Again, my notes</p> <p>12 had, you know, the investigation of what</p> <p>13 occurred. I don't recall if anyone else</p> <p>14 said there was cans being thrown or there</p> <p>15 was anything going on. I don't recall that,</p> <p>16 no.</p> <p>17 (Plaintiff's Exhibit Number</p> <p>18 5 was marked for identification</p> <p>19 and attached to the deposition.)</p> <p>20 BY MS. ROBERTSON:</p> <p>21 Q Plaintiff's Exhibit Number 5.</p> <p>22 MS. SWAIN: Which one is that?</p> <p>23 Q Do you remember having an</p>
<p style="text-align: right;">66</p> <p>1 A I don't understand.</p> <p>2 Q Didn't have any conversations</p> <p>3 with you about any irregularities?</p> <p>4 A Not to my knowledge, no.</p> <p>5 Q Well, if you had had the</p> <p>6 conversation, you would have knowledge of it</p> <p>7 so I don't understand that answer.</p> <p>8 A I don't ever -- I never recall</p> <p>9 any charges that I made coming into question</p> <p>10 on the company credit card, no.</p> <p>11 (Plaintiff's Exhibit Number</p> <p>12 4 was marked for identification</p> <p>13 and attached to the deposition.)</p> <p>14 BY MS. ROBERTSON:</p> <p>15 Q Plaintiff's Exhibit Number 4, can</p> <p>16 you tell me -- tell me what this is, please,</p> <p>17 sir.</p> <p>18 THE WITNESS: Jennifer, can you</p> <p>19 see that?</p> <p>20 MS. ROBERTSON: I'm sorry.</p> <p>21 MS. SWAIN: Yeah, that's fine.</p> <p>22 A This appears to be Linda's</p> <p>23 statement on the June 14th incident.</p>	<p style="text-align: right;">68</p> <p>1 interview with Katherine Long?</p> <p>2 A I don't recall the interview, no,</p> <p>3 investigation. Not from memory.</p> <p>4 Q Now, in her statement she -- she</p> <p>5 says she heard Frank using the F word and --</p> <p>6 I'm not looking at the document. I think</p> <p>7 she said something about not being able to</p> <p>8 do every damn thing; is that right?</p> <p>9 A That is her statement, yes.</p> <p>10 Q And then it said except he was</p> <p>11 doing a lot of yelling, etcetera, etcetera,</p> <p>12 etcetera. Do -- do you -- did you ask her</p> <p>13 to expound on that etcetera, etcetera,</p> <p>14 etcetera when you had an interview with her?</p> <p>15 A I probably would have. I don't</p> <p>16 recall what that would have been without my</p> <p>17 notes. From memory, I don't recall that.</p> <p>18 (Plaintiff's Exhibit Number</p> <p>19 6 was marked for identification</p> <p>20 and attached to the deposition.)</p> <p>21 BY MS. ROBERTSON:</p> <p>22 Q Plaintiff's Exhibit Number 6,</p> <p>23 this is the Tamekia Cook statement. Do you</p>

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<p style="text-align: right;">69</p> <p>1 remember interviewing Tamekia Cook?</p> <p>2 A Not from memory, no.</p> <p>3 Q Do you think you took notes on</p> <p>4 that?</p> <p>5 A I'm sure I would have, yes.</p> <p>6 Q Well, now, Ms. Cook addresses</p> <p>7 Frank using the F word also and doing a lot</p> <p>8 of yelling. Katherine Jones --</p> <p>9 MS. SWAIN: Long.</p> <p>10 Q -- Long addresses the fact that</p> <p>11 Frank Williams was using the F word and</p> <p>12 cursing and saying he couldn't do every damn</p> <p>13 thing. Of course, Ms. Thornton addresses it</p> <p>14 along with some other things. Do you have</p> <p>15 any -- do you have any memory now as we sit</p> <p>16 here as to why Mr. Williams, when he</p> <p>17 addressed the issue in his statement, didn't</p> <p>18 mention any of that?</p> <p>19 MS. SWAIN: Objection.</p> <p>20 A Again, his statement was his</p> <p>21 statement. No. I don't tell people what</p> <p>22 statements to write.</p> <p>23 Q But after you find out that they</p>	<p style="text-align: right;">71</p> <p>1 for anybody that you interviewed or had any</p> <p>2 information concerning or surrounding the</p> <p>3 incident that -- that's outlined in these</p> <p>4 documents, Plaintiff's 6 and 5 and --</p> <p>5 A Not that I recall.</p> <p>6 Q Well, at -- at the unemployment</p> <p>7 compensation hearing, you testified that my</p> <p>8 client, Linda Thornton, was going to be</p> <p>9 written up for this same -- involving --</p> <p>10 surrounding this incident. Do you remember</p> <p>11 that?</p> <p>12 A I remember the -- the</p> <p>13 unemployment hearing.</p> <p>14 Q Yeah. Does that mean you don't</p> <p>15 remember telling those people under oath</p> <p>16 that she was about to -- that had she</p> <p>17 returned to work, she would have been</p> <p>18 written up for baiting Frank Williams for</p> <p>19 yelling and screaming and cursing and</p> <p>20 throwing cans?</p> <p>21 MS. SWAIN: Objection to the</p> <p>22 characterization of his testimony.</p> <p>23 A If I made a statement that she</p>
<p style="text-align: right;">70</p> <p>1 just either lied or avoided the issue, do</p> <p>2 you -- do you address that also?</p> <p>3 MS. SWAIN: Objection.</p> <p>4 A If there were any questions</p> <p>5 raised in another person's statements, I</p> <p>6 would have asked those questions of the</p> <p>7 individuals being questioned, yes.</p> <p>8 Q And when he -- why -- why didn't</p> <p>9 you discipline him for that?</p> <p>10 MS. SWAIN: Objection.</p> <p>11 A At the end of the investigation,</p> <p>12 the -- the appropriate disciplinary actions,</p> <p>13 if needed or if warranted, would have been</p> <p>14 taken.</p> <p>15 Q Did you do any -- did you talk to</p> <p>16 anybody else in that investigation other</p> <p>17 than the people I've -- the -- the witnesses</p> <p>18 I've put in front of you?</p> <p>19 A I wouldn't recall from memory who</p> <p>20 I talked with.</p> <p>21 Q Well, would there be a written</p> <p>22 documentation form -- it's not called</p> <p>23 written. It's called documentation form --</p>	<p style="text-align: right;">72</p> <p>1 would have been written up, I don't know</p> <p>2 what it would have been for specifically.</p> <p>3 Q Well, what if you said for</p> <p>4 baiting him, or words to that effect, for --</p> <p>5 that caused him to pitch this fit?</p> <p>6 MS. SWAIN: Objection to the</p> <p>7 characterization.</p> <p>8 A I don't recall using those words.</p> <p>9 Q Well, what words do you recall</p> <p>10 using?</p> <p>11 A From memory, I don't recall any.</p> <p>12 If you have a written document, I would be</p> <p>13 happy to go over my testimony at that time.</p> <p>14 Q Well, maybe there is some, but</p> <p>15 they apparently have disappeared.</p> <p>16 MS. SWAIN: Objection.</p> <p>17 MS. ROBERTSON: Let's take a</p> <p>18 break.</p> <p>19 (Whereupon, a short break was taken.)</p> <p>20 THE VIDEOGRAPHER: Okay. We're</p> <p>21 back on at 10:38 a.m.</p> <p>22 (Plaintiff's Exhibit Number</p> <p>23 7 was marked for identification</p>

18 (Pages 69 to 72)

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<p style="text-align: right;">73</p> <p>1 and attached to the deposition.)</p> <p>2 BY MS. ROBERTSON:</p> <p>3 Q I'll show you what's been marked</p> <p>4 as Plaintiff's Exhibit Number 7 and</p> <p>5 represent to you it's a transcript of the</p> <p>6 unemployment compensation hearing of Linda</p> <p>7 Thornton. Now, the first page I want to</p> <p>8 direct your attention to is page 51. Now,</p> <p>9 you can read as much of it as you need to</p> <p>10 ahead to get context of it. I will tell you</p> <p>11 it's your describing the investigation of</p> <p>12 the incident we've been -- well, been</p> <p>13 talking about. And -- and -- and you -- on</p> <p>14 page 50 you say, Okay. But the -- in the</p> <p>15 final investigation, Ms. Parrish -- that was</p> <p>16 her maiden name -- make a formal complaint</p> <p>17 against Mr. Williams? Will you read your</p> <p>18 answer and just keep reading until you get</p> <p>19 to that little blue sticker.</p> <p>20 (Brief pause.)</p> <p>21 Q And you understand the Qs are</p> <p>22 what I -- what the compensation lady is</p> <p>23 asking and the As are what you're saying;</p>	<p style="text-align: right;">75</p> <p>1 did make the statement that he was cursing,</p> <p>2 yelling at -- yelling at her, calling her</p> <p>3 MF, GD, MF. Those were her -- that is in</p> <p>4 her statement.</p> <p>5 Q Okay. Did you get any other</p> <p>6 employees to come who came forward that</p> <p>7 witnessed -- come -- the -- Mr. Williams</p> <p>8 making those derogatory comments to</p> <p>9 Ms. Parrish?</p> <p>10 A Yes, ma'am. We had other</p> <p>11 employees involved in the investigation.</p> <p>12 Q Okay. Did they witness -- did</p> <p>13 they hear the -- him calling her names?</p> <p>14 A They heard yelling. They did not</p> <p>15 hear specific cursing occur.</p> <p>16 Q Okay. So the witnesses said they</p> <p>17 did hear yelling, but they did not hear</p> <p>18 specifically that Mr. Williams called</p> <p>19 Ms. Parrish names?</p> <p>20 A Yes, ma'am, that's correct.</p> <p>21 Q All right. Now, where did you --</p> <p>22 where in those statements did you determine</p> <p>23 that? I'm talking about the statements that</p>
<p style="text-align: right;">74</p> <p>1 right?</p> <p>2 A Now, what's the question again?</p> <p>3 That this is --</p> <p>4 MS. SWAIN: I think you're -- I</p> <p>5 think she wanted you to --</p> <p>6 MS. ROBERTSON: Read it.</p> <p>7 MS. SWAIN: -- read --</p> <p>8 THE WITNESS: Read through here?</p> <p>9 MS. SWAIN: What are you asking</p> <p>10 him to read, Ann?</p> <p>11 Q Here. Let's do it this way. I</p> <p>12 will read. Okay. This is on page 50</p> <p>13 starting with line 7. Did she complain that</p> <p>14 he had called her a derogatory name? And</p> <p>15 your answer?</p> <p>16 A My answer: Not -- not at this</p> <p>17 time. Previous altercations -- this is a</p> <p>18 previous altercation.</p> <p>19 Q All right. Number 11. Okay.</p> <p>20 But in the final investigation, did</p> <p>21 Ms. Parrish make a formal complaint against</p> <p>22 Mr. Williams?</p> <p>23 A My answer was: Let's see. She</p>	<p style="text-align: right;">76</p> <p>1 we've been talking about.</p> <p>2 A What is this in reference to?</p> <p>3 What incident is this in reference to?</p> <p>4 There are multiple incidents.</p> <p>5 Q The one we've been talking about</p> <p>6 for the last 30 minutes, the one involved --</p> <p>7 where she said he was screaming and cursing</p> <p>8 and you've got Tamekia Cook saying the label</p> <p>9 3 machine operator -- machine messed up and</p> <p>10 we had bad labels on the work area and we</p> <p>11 cleaned some and when Linda got back,</p> <p>12 some -- some was left on the table and she</p> <p>13 asked Frank what about this mess and Frank</p> <p>14 walked off saying curse words. Exact, I</p> <p>15 don't know. So Linda said something to him.</p> <p>16 He threw up his hands and said --</p> <p>17 MS. SWAIN: Ignore that wording.</p> <p>18 THE WITNESS: Okay.</p> <p>19 Q All right. I'm talking about</p> <p>20 this -- these statements are the ones you're</p> <p>21 referencing. Where does it say that -- that</p> <p>22 she -- that she didn't -- that you had</p> <p>23 nobody saying that he cursed?</p>

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<p style="text-align: right;">77</p> <p>1 A I may have been mistaken on this. 2 I don't -- 3 Q I see. 4 A My statement is they heard 5 yelling. They did not hear specific cursing 6 at her, specifically directed at Linda. 7 That is my statement. 8 Q What does that mean? They 9 told -- he said fuck it and -- I hear -- 10 A I believe -- I believe the 11 cursing in the statements was cursing. It 12 did not say that he cursed her specifically. 13 Q I hear Frank say the F word and I 14 can't do every damn thing. Who do you think 15 he was saying when he said I -- I can't do 16 every damn thing? Was he talking to the -- 17 Mr. -- 18 A I can't -- I can't answer what 19 his -- what -- who he was directing that at. 20 MS. SWAIN: I'm going to object 21 to the question. 22 Q He was talking to Linda; right? 23 MS. SWAIN: Objection.</p>	<p style="text-align: right;">79</p> <p>1 Q Okay. Well, why did you -- why 2 did you assume otherwise? As -- in other 3 words, if he's -- if he's yelling at her and 4 says I can't do every damn thing, would you 5 think he was, as I say it, talking to his 6 imaginary grandmother? I mean, who else 7 would he have been talking to? 8 MS. SWAIN: Objection. 9 A There are instances when 10 employees curse in the plant. 11 Q Yeah. But -- 12 A That has occurred. 13 Q But -- but not in -- in that 14 context. 15 MS. SWAIN: Objection. 16 A That's an assumption. 17 Q All right. Well, you've got her 18 saying he was cursing at her. You've got 19 other employees saying that he was 20 definitely cursing. And it would have only 21 made sense or it -- that he was definitely 22 cursing. Where is it that you have that -- 23 that anybody said that he -- that she -- he</p>
<p style="text-align: right;">78</p> <p>1 A If that's your assumption. 2 Q Well, I mean, that's what she 3 said; right? 4 A That is -- that is her statement. 5 Q Did anybody -- and -- and this 6 lady said she heard it; right? 7 MS. SWAIN: Objection. 8 A This statement says that they 9 heard cursing, yes. 10 Q That he -- they -- they heard 11 him -- him say I can't do every damn thing. 12 A That is their statement, yes, 13 ma'am. 14 Q And in the -- in the context of 15 the conversation with Linda Thornton. 16 MS. SWAIN: Objection. 17 Q Where in there is there any 18 statement that -- that -- that he -- those 19 curse words were not directed at Linda 20 Thornton? 21 MS. SWAIN: Objection. 22 A Again, you assume they were 23 directed at her. I did not assume that.</p>	<p style="text-align: right;">80</p> <p>1 wasn't cursing at her? 2 MS. SWAIN: Objection. 3 (Brief pause.) 4 MS. SWAIN: Is there a question 5 on the table, Ann? 6 MS. ROBERTSON: Yeah. 7 Q Where is it that -- in the 8 investigation that anybody said that those 9 curse words were not addressed at her? 10 MS. SWAIN: Objection. 11 A This is a statement that they 12 heard curse words. I -- again, their 13 statement states they heard curse words. 14 Q Yes, sir. 15 A It did not say where -- who they 16 were directed towards as -- 17 Q But Linda said they were directed 18 at her; right? 19 A That's Linda's statement, yes, 20 ma'am. 21 Q Okay. So my question is: Linda 22 said they were directed at her. Other 23 people said they heard him cursing over the</p>

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<p style="text-align: right;">81</p> <p>1 labels and -- and -- and saying things 2 that -- very much in the same context that 3 Linda reported that he said. Where is it in 4 your investigation that -- that anybody said 5 that he didn't direct his curse words at 6 her? 7 MS. SWAIN: Objection. 8 A I don't assume any direction of 9 curse words. I take these statements as 10 given and then make my decisions based off 11 of that. 12 Q So you assumed Linda lied? 13 MS. SWAIN: Objection. 14 A There's no assumption in my 15 investigation. 16 Q Well, you told the -- the -- the 17 lady that there was no -- that he didn't 18 curse at Linda. Linda told you he had 19 cursed at her; right? 20 MS. SWAIN: Objection. 21 A That is Linda's statement, yes. 22 Q Okay. And everybody -- the other 23 witnesses said they heard the curse words;</p>	<p style="text-align: right;">83</p> <p>1 everybody was -- it was just said write down 2 what you saw or heard. Nobody asked them do 3 you believe that the stuff was addressed to 4 Linda, did they? 5 A Again, that's an assumption. 6 Q Well -- 7 A They heard cursing. The cursing 8 is the statement here. It is in the 9 statement. They did heard -- they did hear 10 cursing. I mean, if you follow that line of 11 thinking, Frank's statement does not include 12 that he cursed. The outcome of the 13 investigation is that Frank did curse. He 14 was disciplined for cursing. 15 Q Okay. 16 A Therefore, again, following the 17 line of facts, cursing occurred. He was 18 disciplined for cursing. It was not 19 determined in these statements that the 20 cursing was directed towards Linda. 21 Q On what did you base that 22 decision? 23 A On the statements given by the</p>
<p style="text-align: right;">82</p> <p>1 correct? Where in your investigative 2 information is there anybody saying that 3 what -- that his cursing was not directed at 4 Linda? 5 MS. SWAIN: Objection. 6 A These statements are the 7 individual statements. 8 Q So where did you come up with 9 that conclusion since you had no evidence 10 that the cursing was not at Linda? 11 A I can only make a decision or 12 a -- an outcome to an investigation based on 13 the facts that are presented to me. 14 Q Yeah. 15 A The employees did not 16 specifically say in their statements that 17 the cursing was directed toward Linda. 18 Therefore, I cannot assume that the cursing 19 was directed towards Linda. 20 Q Nobody -- 21 A I cannot make that assumption. 22 Q And there -- and -- but you do 23 know that these statements were not --</p>	<p style="text-align: right;">84</p> <p>1 employees. 2 Q Linda said -- Linda said that the 3 cursing was directed at her. Did you just 4 completely disbelieve her after you had 5 corroborating evidence that there was indeed 6 cursing? 7 MS. SWAIN: Objection. 8 A These statements do not say that 9 the cursing was directed at Linda. 10 Q No, sir. But I'm saying that her 11 statement was that it was directed at her. 12 A I agree. 13 Q Did you disbelieve her? 14 A I believe that her perception was 15 that it was directed at her in her 16 statement, yes. 17 Q And -- and was there -- was there 18 anybody that had a different perception? 19 MS. SWAIN: Objection. 20 A The other employees did not state 21 the cursing was directed towards Linda. 22 Q They weren't asked, were they? 23 MS. SWAIN: Objection.</p>

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<p style="text-align: right;">85</p> <p>1 A I don't recall one way or the 2 other. 3 Q Did you interview Linda Thornton 4 during the investigation of this incident? 5 A I'm sure I did. 6 Q When? When did you interview 7 her? 8 A I don't recall the date. 9 Sometime during the course of the 10 investigation after the initial complaint 11 and before the conclusion. 12 Q Did you take one of the -- did 13 you take, like, the 13th or 14th off? Were 14 you gone that day? 15 A Myself? 16 Q Uh-huh. 17 A I don't recall. 18 Q Did you have a child at or about 19 this time, not you but you and your wife? 20 A My wife did have a child on 21 May 16th, yes. 22 Q May 16th? 23 A Yes.</p>	<p style="text-align: right;">87</p> <p>1 (Witness reviewing document.) 2 A Okay. 3 Q Do you see where you say that if 4 she returned, she would have been 5 disciplined also? 6 A Yes, ma'am. 7 Q What were you going to discipline 8 her for? 9 A If Linda would have received 10 discipline for that action, more than likely 11 it would have been for general employee 12 conflict. 13 Q I see. General employee 14 conflict. 15 A The same type of conflict as 16 documented in previous disciplinary actions, 17 an ongoing issue. 18 Q So she -- she reports to her 19 supervisor that this -- the convicted child 20 molester is over there pitching a fit, 21 kicking cans -- or excuse me -- throwing 22 cans, dog cussing her, and she was going to 23 be written up for general conflict?</p>
<p style="text-align: right;">86</p> <p>1 Q Do you think you were off 2 during -- on June for something? 3 A I don't recall being off during 4 this investigation, no. 5 Q Did -- now that we've discussed 6 it, did -- did Frank Williams specifically 7 deny that he -- or first of all, did Frank 8 Williams admit that he cursed? 9 MS. SWAIN: I'm going to object. 10 Asked and answered. 11 A I don't recall if Frank admitted 12 or not. 13 Q Okay. 14 A Not from memory. No, I don't 15 recall that. 16 Q Look at page 54 and start 17 reading -- read that right there 18 (indicating). 19 A Okay. 20 MS. SWAIN: Starting with -- here 21 at line 18? 22 MS. ROBERTSON: Yeah, at or about 23 where that sticker is.</p>	<p style="text-align: right;">88</p> <p>1 MS. SWAIN: Objection. 2 A Yeah. I'd have -- she did not 3 return to work. There was no disciplinary 4 action issued. 5 Q Well -- but you told the 6 unemployment compensation lady that if she 7 had come back, she would have been written 8 up; right? 9 A That is what I said, yes, ma'am. 10 Q And so -- and -- and so you were 11 -- and on what were you basing that she 12 needed to be written up? 13 MS. SWAIN: Objection. Asked and 14 answered. 15 A Again, general -- general 16 conflict. You know, an ongoing issue that's 17 not resolved. 18 Q So let me see -- get this -- see 19 if I get this right. If Christ is work -- 20 walking along and somebody comes up and 21 starts dog cussing him and reaches out and 22 punches him and this is not the first time 23 he has been punched because some people</p>

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<p style="text-align: right;">89</p> <p>1 didn't agree with him, he would have been --</p> <p>2 and he stood there and took it and said, I'm</p> <p>3 sorry, sir. That would -- he would have</p> <p>4 been written up for general conflict, too,</p> <p>5 because he was involved?</p> <p>6 MS. SWAIN: Objection. What are</p> <p>7 you talking about?</p> <p>8 MS. ROBERTSON: I'm talking about</p> <p>9 what would Christ do. He just said</p> <p>10 if -- if she's involved in the conflict</p> <p>11 with an employee that she's going to be</p> <p>12 written up for general conflict. That's</p> <p>13 incredible and I'm just wanting to make</p> <p>14 sure I get it straight.</p> <p>15 MS. SWAIN: Okay. Well, if you</p> <p>16 have a question about the case, ask him.</p> <p>17 We're not going on to what would Christ</p> <p>18 do in a deposition.</p> <p>19 MS. ROBERTSON: Off the record.</p> <p>20 (Whereupon, an</p> <p>21 off-the-record discussion was</p> <p>22 held.)</p> <p>23 Q If somebody is involved in</p>	<p style="text-align: right;">91</p> <p>1 MS. SWAIN: Objection.</p> <p>2 A No, ma'am, I didn't say that.</p> <p>3 Q Well, read what you said, please.</p> <p>4 A I said they were equally involved</p> <p>5 in the altercation.</p> <p>6 Q Okay.</p> <p>7 A They were both involved. They</p> <p>8 were not necessarily both at fault.</p> <p>9 Q But she was going to be written</p> <p>10 up also. Was she getting some lesser -- was</p> <p>11 she going to be written up some lesser way</p> <p>12 than a write-up? I mean, what could be</p> <p>13 lesser?</p> <p>14 A I don't recall Linda ever</p> <p>15 receiving disciplinary action in this</p> <p>16 case --</p> <p>17 Q Well --</p> <p>18 A -- in this specific instance.</p> <p>19 Q What you told the unemployment</p> <p>20 compensation lady was the reason she didn't</p> <p>21 get written up was because she didn't come</p> <p>22 back to work. So you couldn't give her the</p> <p>23 write-up; right? That was the only reason,</p>
<p style="text-align: right;">90</p> <p>1 conflict because their ideas or -- or</p> <p>2 whatever are not welcomed and somebody</p> <p>3 pitches a fit and yells at them and curses,</p> <p>4 stomps on the ground, kicks cans or throws</p> <p>5 cans, because she's involved, she's also</p> <p>6 going to get the same discipline?</p> <p>7 MS. SWAIN: Objection.</p> <p>8 A Any disciplinary actions that</p> <p>9 would have been taken against Linda would</p> <p>10 have been based on the facts. If</p> <p>11 disciplinary had been taken, it would have</p> <p>12 been based on the fact that she was involved</p> <p>13 or instigating the conflict, which is a</p> <p>14 previous disciplinary action showed that</p> <p>15 Linda was involved in a lot of conflict and</p> <p>16 lot of -- lot of instigation of conflict.</p> <p>17 Q So based -- all right. Page 56,</p> <p>18 you -- read starting on line 9.</p> <p>19 (Witness reviewing document.)</p> <p>20 A Okay.</p> <p>21 Q All right. Did -- you -- again,</p> <p>22 you said she was equally at fault in this</p> <p>23 incident; right?</p>	<p style="text-align: right;">92</p> <p>1 at least according to what you told the</p> <p>2 lady, to keep my client from getting her</p> <p>3 pennies.</p> <p>4 MS. SWAIN: Objection. Is there</p> <p>5 a question --</p> <p>6 THE WITNESS: There's a question,</p> <p>7 yeah.</p> <p>8 Q Yeah. Isn't that what you</p> <p>9 told -- the only reason she wasn't written</p> <p>10 up, at least according to you under oath to</p> <p>11 the unemployment compensation lady, was</p> <p>12 because she didn't come back to work; right?</p> <p>13 A What you're saying is the only</p> <p>14 reason she didn't get written up is because</p> <p>15 she didn't come back to work?</p> <p>16 Q Isn't that what you said in your</p> <p>17 testimony, Plaintiff's Exhibit Number 7,</p> <p>18 page 54, line 20? All right. Let's start</p> <p>19 at 18. The lady said, Okay. What were the</p> <p>20 reasons you -- you needed to term -- were --</p> <p>21 was there any reason you needed to terminate</p> <p>22 him? No, ma'am. We disciplined both</p> <p>23 employees equally as well as she would have</p>

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<p style="text-align: right;">93</p> <p>1 received disciplinary action had she 2 returned to work that Monday. 3 So the only reason she didn't return -- 4 that she didn't receive this same discipline 5 was because she didn't come back to work. 6 Isn't that right? 7 A I didn't say they would receive 8 the same discipline. I said they would be 9 disciplined equally. Both of them would 10 have been addressed and the disciplinary -- 11 if warranted, the disciplinary action would 12 have been issued. There -- it -- it could 13 have been as simple as her receiving a 14 counseling or a discussion or a memo to 15 file. Not necessarily the same disciplinary 16 action, no. 17 Q We disciplined both employees 18 equally. 19 A My -- my -- what I mean by 20 discipline them equally is they were both 21 disciplined relevant to the facts equally. 22 One wasn't given harsher discipline and one 23 given less discipline. They were</p>	<p style="text-align: right;">95</p> <p>1 that that's a good thing given that you have 2 no memory. 3 MS. SWAIN: Objection. Ann, 4 that's not necessary. 5 (Plaintiff's Exhibit Number 6 8 was marked for identification 7 and attached to the deposition.) 8 BY MS. ROBERTSON: 9 Q While I'm looking for that, look 10 at Plaintiff's Exhibit Number 8. I will ask 11 you a question about that in a minute. 12 (An off-the-record 13 discussion was held.) 14 Q While she's making a copy, let's 15 look at Plaintiff's Exhibit Number 8. Can 16 you tell me what this is, please? 17 A It appears to be a training 18 documentation for Frank Williams. 19 Q Okay. And do you know what those 20 codes are? 21 A No, ma'am, I don't. 22 Q But if -- if Frank Williams had 23 received any sexual harassment training,</p>
<p style="text-align: right;">94</p> <p>1 disciplined equally based on the facts in 2 the case. In other words, there was no 3 preference given to one or the other. 4 That's what I mean by equally. 5 Q And he received the write-up so 6 she was going to receive a write-up; right? 7 MS. SWAIN: Objection. 8 A I -- I don't recall. I believe 9 he received a -- a write-up for his -- you 10 would have to look at the document. I don't 11 recall. 12 Q For cursing and intimid -- 13 A Okay. 14 Q -- breaking the policy of 15 intimidating, threatening an employee -- 16 another employee. 17 MS. SWAIN: Objection. 18 A I don't recall what the write-up 19 was for. You'd have to show that to me. 20 Q Okay. I should have known that. 21 A I prefer to rely on the facts in 22 the statements versus memory. 23 Q Well, that's -- it's apparent</p>	<p style="text-align: right;">96</p> <p>1 there would be something equivalent to this 2 in his personnel file? It appears now that 3 we know that that's where the -- the 4 documentation is kept. 5 MS. SWAIN: Objection. 6 A I'm not familiar with this 7 training documentation form at all. This 8 was signed in January after I left in 9 December. 10 Q Okay. 11 (Plaintiff's Exhibit Number 12 9 was marked for identification 13 and attached to the deposition.) 14 BY MS. ROBERTSON: 15 Q Plaintiff's 9, what's that? 16 A This appears to be a first step 17 counseling for Frank Williams dated 18 June 16th -- 19 Q All right. 20 A -- for an incident that occurred 21 on 6/14. 22 Q And it says on June 14th, 2006, 23 you used profanity in the presence of other</p>

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<p style="text-align: right;">97</p> <p>1 coworkers. This is a violation of plant 2 rule number 16, fighting, threatening, 3 intimidating, coercing, interfering with 4 fellow associates, or any other acts of 5 violence on company property. 6 Now, does -- now, what was it, now, 7 that you thought that the disciplinary that 8 -- that Linda Thornton was going to receive 9 was going to be for? 10 MS. SWAIN: I'm going to object 11 to asked and answered at least twice 12 now, maybe three times. 13 A You know, I don't recall. It 14 would be general conflict or instigational 15 if -- if she received a write-up. 16 Q Well -- and we have determined, 17 at least under oath you told the lady at the 18 unemployment, that she would have returned 19 one -- a write-up had she returned to work. 20 A No, ma'am, I didn't. I said they 21 would be disciplined equally, as in one 22 would be disciplined equally. 23 Q Well, what other -- what other</p>	<p style="text-align: right;">99</p> <p>1 termination within a certain period of time. 2 It's in the disciplinary policy. 3 Q So apparently at Flavor House if 4 you paced it right, you could intimidate 5 another employee or interfere with an 6 employee's work about twice a year and not 7 ever get fired; right? 8 MS. SWAIN: Objection. 9 Q If you just took your medication 10 sometime -- 11 MS. SWAIN: Objection. 12 A Well, we follow the disciplinary 13 process, the step process, and it's -- it's 14 a written disciplinary process that's 15 followed for all employees throughout the 16 plant. 17 Q But if all -- so if all of them 18 only took their medication some of the time, 19 they could get by with pitching a fit once 20 or twice a year and not have -- get fired; 21 right? 22 MS. SWAIN: Objection. 23 Q I guess you don't have an answer</p>
<p style="text-align: right;">98</p> <p>1 discipline below a write-up -- 2 A There are -- there are counseling 3 sessions. There are discussions, memos to 4 file. 5 Q What effect does a write-up -- a 6 written step one counseling form have? 7 A It's a record of counseling. 8 It's a record of our step process in 9 disciplinary actions. 10 Q What -- is there anything -- does 11 -- would that have rolled off, as they say, 12 after a year? 13 A I don't recall the specific 14 rolling off and on period of the 15 disciplinary steps. I believe there was a 16 one-year period that steps would be reduced 17 for -- as specifically written in the 18 documentation in our policy. 19 Q Well, how many steps do you have 20 to get before you get fired? 21 MS. SWAIN: Objection. 22 A I don't recall if it's step 23 three, step four, or what leads to</p>	<p style="text-align: right;">100</p> <p>1 to that, which brings up another issue. Did 2 Flavor House have a policy against hiring 3 felons? 4 MS. SWAIN: Objection. During 5 his employment there what was their 6 policy in regard to hiring convicted -- 7 MS. ROBERTSON: When he was 8 employed there -- all right. 9 A I don't know of a policy 10 prohibiting the hire of anyone at Flavor 11 House. 12 Q What about lying? Are you asked 13 if you have been convicted of a felony on 14 the application? 15 A I would have to look at an 16 application to see what it asks. I don't 17 recall. Over the course of years at Flavor 18 House and business for 18 years, there have 19 been multiple applications so -- 20 Q Well, let -- let's assume without 21 -- 22 A I don't assume. 23 Q Well, would you please assume for</p>

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<p style="text-align: right;">101</p> <p>1 me and you can take it that there was a 2 policy of asking if a person had been 3 convicted of a felony on the application. 4 Was it -- do you know if it would have been 5 repercussions for not telling the truth 6 about it? 7 MS. SWAIN: Objection. 8 A Again, I can't make a speculation 9 or an assumption. 10 Q Well, you know there was a 11 complaint by my client, do you not, that 12 Frank Williams was a convicted felon? 13 A I don't recall a complaint about 14 someone's felony status or conviction 15 status. 16 Q Or that he was a -- either a sex 17 offender or a child molester? 18 A Again, I don't recall a complaint 19 being filed that someone was a -- a felon or 20 had been convicted of a crime. 21 Q Well, what -- what -- do you 22 recall anything about that? 23 A There were statements taken</p>	<p style="text-align: right;">103</p> <p>1 you -- you can see who brought the statement 2 is basically someone who's making an 3 accusation, that's generally the person 4 that's bringing the statement or bringing 5 the accusation. 6 THE VIDEOGRAPHER: Let me go 7 ahead and change tape real quick. 8 MS. ROBERTSON: All right. let's 9 take a little break. 10 (Whereupon, a short break was taken.) 11 THE VIDEOGRAPHER: Okay. We're 12 back on the record at 11:35. This is 13 the beginning of tape 3. 14 (Plaintiff's Exhibit Number 15 11 was marked and attached to the 16 deposition.) 17 BY MS. ROBERTSON: 18 Q Can you tell me what Plaintiff's 19 Exhibit Number 11 is, please, sir? 20 MS. ROBERTSON: I'm sorry, 21 Jennifer. 22 MS. SWAIN: It's okay. Okay. 23 A This is Linda Thornton's</p>
<p style="text-align: right;">102</p> <p>1 during investigations about discussions 2 within the plant about Frank's status as a 3 convicted sex offender, yes. 4 Q Okay. Do you remember how that 5 -- the -- in the context, how that 6 investigation came up? 7 A I would have to refer back to the 8 statements to find out who initiated that -- 9 that investigation. 10 Q And, sir, how would you figure 11 that out? 12 A You should have the statements. 13 Q Yeah. But I'm asking how -- how 14 can you tell from the statements who 15 initiated the -- the complaint? 16 A It would be who initially brought 17 the statement in. 18 Q Well, what if -- and -- and there 19 was some way to -- to denote that on the -- 20 on the statement? 21 A (No response.) 22 Q Sir? 23 A When you read the statements,</p>	<p style="text-align: right;">104</p> <p>1 statement on 2/16. 2 (Plaintiff's Exhibit Number 3 12 was marked and attached to the 4 deposition.) 5 BY MS. ROBERTSON: 6 Q Okay. Tell me what Plaintiff's 7 Exhibit Number 12 is. 8 MS. ROBERTSON: Sorry, Jennifer. 9 A This is Frank Williams' statement 10 of 2/16. 11 Q All right. Tell me which one of 12 these made a complaint. 13 A I don't recall which one made the 14 first complaint. 15 Q Well, I thought you testified 16 before the break that you could tell me by 17 looking at the documents who initiated the 18 complaint. Now, can -- is that still your 19 statement? 20 MS. SWAIN: Objection. 21 A I believe I said usually you 22 could tell from the documents that you 23 can -- who initiated the complaint.</p>

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<p style="text-align: right;">105</p> <p>1 Q All right.</p> <p>2 A Regardless of who put the</p> <p>3 complaint in first, it's -- it's a statement</p> <p>4 about the situation. This is not a</p> <p>5 complaint, per se. This is a statement of</p> <p>6 the occurrences.</p> <p>7 Q Did you ask Melvin Hutchins to</p> <p>8 give a statement about anything that -- do</p> <p>9 you see where Linda references that she had</p> <p>10 a conversation shortly before with Melvin</p> <p>11 Hutchins about Frank Williams and issues</p> <p>12 with the work with him?</p> <p>13 MS. SWAIN: Objection.</p> <p>14 A I'm sure I would have talked with</p> <p>15 Frank -- with Melvin Hutchins. Anyone</p> <p>16 mentioned in the statement I would have</p> <p>17 discussed, you know, what their involvement</p> <p>18 or recollection or what was -- what was</p> <p>19 questioned in the statement. Yes, I would</p> <p>20 have asked that.</p> <p>21 Q Would there be a document form</p> <p>22 from him?</p> <p>23 A There could have been. I don't</p>	<p style="text-align: right;">107</p> <p>1 A I -- I take -- I take notes based</p> <p>2 on investigations, and I make determinations</p> <p>3 based off of those notes.</p> <p>4 Q Because, like, I rely on my -- I</p> <p>5 can remember stuff that we've talked about</p> <p>6 in depositions that I've taken before even</p> <p>7 though I have a court reporter that -- so I</p> <p>8 can rely on what's written down. You know,</p> <p>9 just by nature, I have -- sometimes my mind</p> <p>10 absorbs stuff that actually happens to me.</p> <p>11 A That's correct.</p> <p>12 Q Do you have any independent</p> <p>13 memory of having a conversation with Linda</p> <p>14 Thornton about the issues she's referring to</p> <p>15 that she had discussed with Melvin Hutchins</p> <p>16 about Frank Williams?</p> <p>17 A I recall having multiple</p> <p>18 conversations with Linda Thornton throughout</p> <p>19 the course of my employment with Flavor</p> <p>20 House in regards to multiple issues.</p> <p>21 Q Uh-huh.</p> <p>22 A Now, to tell you specifically</p> <p>23 what memory relates to what issue, I can't</p>
<p style="text-align: right;">106</p> <p>1 recall if there was specifically, no. I</p> <p>2 don't -- I don't recall that.</p> <p>3 Q Do you recall if you followed up</p> <p>4 with Linda Thornton to find out what the</p> <p>5 issues that she had discussed with Melvin</p> <p>6 Hutchins were?</p> <p>7 A During the investigation, I'm</p> <p>8 sure I asked anything relevant to the</p> <p>9 statement.</p> <p>10 Q And do you have any independent</p> <p>11 memory of that?</p> <p>12 A Again, I would have had notes on</p> <p>13 that. I don't recall from memory.</p> <p>14 Q No, sir. I asked you do -- as we</p> <p>15 sit here today, do you have any independent</p> <p>16 memory of having a conversation with Linda</p> <p>17 Thornton about what the issues she's</p> <p>18 referring to about -- that she had with</p> <p>19 Melvin Hutchins about Frank Williams?</p> <p>20 A I don't rely on memory of</p> <p>21 specific investigations, no.</p> <p>22 Q Well, whether you rely -- you</p> <p>23 know -- whether you --</p>	<p style="text-align: right;">108</p> <p>1 rely on my memory for that, no. That's why</p> <p>2 I have notes.</p> <p>3 Q Okay. And where are those notes,</p> <p>4 sir?</p> <p>5 A Again, I've already answered that</p> <p>6 question. My notes were in my desk drawer</p> <p>7 when I left Flavor House.</p> <p>8 Q Did you maintain a copy of those</p> <p>9 notes for yourself when you left?</p> <p>10 A No, ma'am, I did not.</p> <p>11 Q Did you -- did you turn them over</p> <p>12 to Mary Ann or anybody else when you left?</p> <p>13 A No, I did not.</p> <p>14 Q Had you turned them over to</p> <p>15 anyone else who might have been</p> <p>16 investigating the -- the allegations that</p> <p>17 Ms. Thornton had made in her EEOC charge?</p> <p>18 A I did not turn over notes unless</p> <p>19 requested by corporate counsel. Any</p> <p>20 documentation we had was sent to them.</p> <p>21 Q I don't want to know whether or</p> <p>22 not -- you know, the conversations you may</p> <p>23 or may not have had with corporate counsel.</p>

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<p style="text-align: right;">109</p> <p>1 Did anybody ask you to turn over those notes</p> <p>2 during the course of an investigation</p> <p>3 involving my client's EEOC charge? Well,</p> <p>4 strike that.</p> <p>5 Did you turn over any notes that you</p> <p>6 referred to concerning this investigation</p> <p>7 that we're talking about now or the one</p> <p>8 where Ms. Thornton said that Frank was</p> <p>9 yelling and pitching a fit? Did you turn</p> <p>10 those over during the time that --</p> <p>11 immediately after the EEOC charge came in</p> <p>12 from Ms. Thornton?</p> <p>13 MS. SWAIN: Objection.</p> <p>14 A Any request for documentation</p> <p>15 would have been honored.</p> <p>16 Q Okay. Do you recall any -- do</p> <p>17 you recall turning over any documents to</p> <p>18 anybody, whether it was corporate counsel or</p> <p>19 Donald Duck?</p> <p>20 A Again, I don't recall</p> <p>21 specifically what documents were turned over</p> <p>22 in what case on what dates two years ago.</p> <p>23 No, I don't.</p>	<p style="text-align: right;">111</p> <p>1 years ago. Until I complete an</p> <p>2 investigation, I don't know what that is.</p> <p>3 Q Well, other than that he was a</p> <p>4 child molester or that his brother's wife's</p> <p>5 daughter was his girlfriend, what else would</p> <p>6 he have been saying was none of her</p> <p>7 business?</p> <p>8 MS. SWAIN: Objection.</p> <p>9 A Any personal business is not</p> <p>10 another employee's personal business.</p> <p>11 Q You think being a child molester</p> <p>12 is somebody's -- other -- is -- is their</p> <p>13 personal business?</p> <p>14 MS. SWAIN: Objection.</p> <p>15 A It's a matter of public record.</p> <p>16 Q Yes. It would be -- at least the</p> <p>17 State of Alabama takes the position that</p> <p>18 it's the public's business to -- to know</p> <p>19 convicted sex offenders; right?</p> <p>20 MS. SWAIN: Objection.</p> <p>21 A It is a public knowledge, yes.</p> <p>22 Q And I -- other -- other than the</p> <p>23 public -- the State of Alabama makes it a</p>
<p style="text-align: right;">110</p> <p>1 Q Now, on Plaintiff's Exhibit</p> <p>2 Number 12, since you can't remember who</p> <p>3 initiated this conversation concerning</p> <p>4 Mr. Williams and his felonious past,</p> <p>5 Plaintiff's 12, it says Jewel -- this is</p> <p>6 Mr. Williams' statement; correct?</p> <p>7 A It appears to be, yes.</p> <p>8 Q Jewel Sidely came up to me in the</p> <p>9 hallway and told me that Linda Thornton was</p> <p>10 outside telling everyone that I was a child</p> <p>11 molester and my brother's wife's daughter</p> <p>12 was my girlfriend. I haven't done a family</p> <p>13 tree, but that's intriguing. This is</p> <p>14 harassment and I don't like it. I don't</p> <p>15 start trouble. What happened 15 years ago</p> <p>16 is none of her business.</p> <p>17 Do you take that as a confession that</p> <p>18 he is a child molester; he just doesn't like</p> <p>19 it that my client was talking about it?</p> <p>20 MS. SWAIN: Objection.</p> <p>21 A I don't take this as a admittance</p> <p>22 of anything. It's a statement that there</p> <p>23 was evidently something that occurred 15</p>	<p style="text-align: right;">112</p> <p>1 law that it be public knowledge, it would be</p> <p>2 those mommas and daddies of those babies he</p> <p>3 was molesting, wouldn't it?</p> <p>4 MS. SWAIN: Objection.</p> <p>5 A The discussion of a person's</p> <p>6 business is not proper workplace discussion.</p> <p>7 It had no -- no bearing on working at Flavor</p> <p>8 House, a person's past, a person's personal</p> <p>9 convictions or anything else. And another</p> <p>10 employee discussing those openly is a</p> <p>11 violation of that person's ability to work</p> <p>12 in a harassment free environment.</p> <p>13 Q When you -- did you talk to</p> <p>14 Mr. Williams about whether or not he had in</p> <p>15 fact been convicted of child molestation?</p> <p>16 A I would have asked Mr. Williams</p> <p>17 in an investigation anything relevant to</p> <p>18 this statement, yes.</p> <p>19 Q All right. And do you remember</p> <p>20 what he told you, whether in fact -- whether</p> <p>21 or not he had been convicted of child</p> <p>22 molestation?</p> <p>23 A I recall there was a discussion</p>

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<p style="text-align: right;">113</p> <p>1 about his past conviction.</p> <p>2 Q Okay.</p> <p>3 A Specifically what it was, I do</p> <p>4 not recall other than it was involved in a</p> <p>5 -- in a either child molestation or some --</p> <p>6 some type of sex-related offense.</p> <p>7 Q Did he -- did he admit that he</p> <p>8 had been involved with that?</p> <p>9 A He did say there was a past</p> <p>10 conviction, yes.</p> <p>11 Q A conviction?</p> <p>12 A I don't recall specifically what</p> <p>13 the conviction was, no.</p> <p>14 Q Did he tell you he had been</p> <p>15 convicted of forgery and was on probation</p> <p>16 when he was -- pled guilty to multiple</p> <p>17 charges of child molestation?</p> <p>18 MS. SWAIN: Objection.</p> <p>19 MS. ROBERTSON: Look at the</p> <p>20 probation record. Yeah. He was on</p> <p>21 probation.</p> <p>22 A I don't recall that coming up</p> <p>23 specifically, no.</p>	<p style="text-align: right;">115</p> <p>1 you told him to go on his merry way?</p> <p>2 MS. SWAIN: Objection. He's</p> <p>3 already answered the question.</p> <p>4 A Again, if -- if there was</p> <p>5 anything additional to add, it would have</p> <p>6 been in my notes that I took.</p> <p>7 Q That's no longer -- nobody knows</p> <p>8 where they are. They -- somebody --</p> <p>9 everybody has forgotten where they were;</p> <p>10 right?</p> <p>11 MS. SWAIN: Objection.</p> <p>12 Q And that dust strikes again. Did</p> <p>13 you ask Frank if he had ever told anybody at</p> <p>14 the workplace that he had been in prison?</p> <p>15 A I don't recall asking Frank</p> <p>16 specifically if he had been in prison --</p> <p>17 Q No, I didn't ask you that.</p> <p>18 A -- or if he had told someone he</p> <p>19 had been in prison. I don't remember the</p> <p>20 exact conversation we had, again, two years</p> <p>21 ago.</p> <p>22 Q Did you ask him if he had ever</p> <p>23 told anybody at the workplace that he had</p>
<p style="text-align: right;">114</p> <p>1 Q Did he tell you that he had spent</p> <p>2 four years of a ten-year sentence in a</p> <p>3 prison, Kilby I think?</p> <p>4 A Again, I don't recall</p> <p>5 specifically what the conversation was is</p> <p>6 why I took notes.</p> <p>7 Q Did you ask him about that?</p> <p>8 A I would have asked anything</p> <p>9 relevant to the statement that was given.</p> <p>10 Q Did he tell you that he was on</p> <p>11 probation for those convictions of having --</p> <p>12 of sodomizing a 10-year-old child --</p> <p>13 A I don't recall.</p> <p>14 Q -- and having sexual intercourse</p> <p>15 with a 13-year-old child and a 14-year-old</p> <p>16 child and a 15-year-old child? Did he tell</p> <p>17 you that he was on probation when he got the</p> <p>18 job with Flavor House for those -- that --</p> <p>19 those convictions?</p> <p>20 MS. SWAIN: Objection.</p> <p>21 A I don't recall the issue of</p> <p>22 probation coming up.</p> <p>23 Q Well, what did he tell you that</p>	<p style="text-align: right;">116</p> <p>1 been convicted as a sex offender or a child</p> <p>2 molester?</p> <p>3 A I recall during the conversations</p> <p>4 that I had with the individuals involved</p> <p>5 here that some of the discussion was</p> <p>6 involving who has said what Frank had told</p> <p>7 individuals, what Linda had told</p> <p>8 individuals. I don't recall who said</p> <p>9 specifically I was in prison, I wasn't in</p> <p>10 prison. I don't recall specifically who</p> <p>11 said those, no.</p> <p>12 Q Well, would it be important to --</p> <p>13 to you to know if in fact Frank had been</p> <p>14 telling people that he had been in prison</p> <p>15 before and that Frank had told people he had</p> <p>16 been convicted for child molestation?</p> <p>17 A What was the question?</p> <p>18 Q Would it have been important in</p> <p>19 conducting this investigation for you to</p> <p>20 know whether or not Frank had been telling</p> <p>21 people the very same things he said she was</p> <p>22 telling people?</p> <p>23 A It would have probably been</p>

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<p style="text-align: right;">117</p> <p>1 relevant as in if he's discussing it, it's 2 open knowledge, yes. 3 Q Do you know that Frank Williams 4 was still telling people he had been in 5 prison after Linda Thornton was no longer 6 working there? 7 MS. SWAIN: Objection. 8 A I don't know what individual 9 conversations Frank would have had with 10 other employees. 11 Q Do you think it would have been 12 appropriate for him to tell people that but 13 inappropriate for Linda to be -- tell people 14 that? 15 MS. SWAIN: Objection. 16 A It's inappropriate for an 17 employee to discuss other employees' past, 18 present, future if it's a derogatory nature. 19 Q What if they were discussing it 20 in the context about the way they were being 21 treated as a female? 22 MS. SWAIN: Objection. 23 A I don't see the relevance of that</p>	<p style="text-align: right;">119</p> <p>1 MS. SWAIN: Objection. 2 A That could be a multitude of 3 things. 4 Q Well, are you -- are you 5 understanding or are you familiar with the 6 concept of the totality of the 7 circumstances? 8 A Yes. 9 Q That you don't pars the ax, that 10 you don't pars the circumstances, that you 11 take everything as a whole? 12 A Yes, I do. 13 MS. SWAIN: Objection. 14 Q Then why would you have just 15 testified that you take each incident 16 individually? 17 MS. SWAIN: He's not talk -- you 18 didn't ask him that. When he said that, 19 he wasn't responding to a question about 20 a sexually hostile work environment. 21 MS. ROBERTSON: I had asked -- 22 MS. SWAIN: You had asked him 23 about child molestation.</p>
<p style="text-align: right;">118</p> <p>1 question. I don't see how that -- redefine 2 your question. Maybe I can answer it 3 better. 4 Q Do you understand that child 5 molestation is a -- of the opposite sex is, 6 among other things, a -- a sign of complete 7 disrespect for the other sex? 8 MS. SWAIN: Objection. 9 A I believe that's your opinion. 10 Q You don't think -- you don't 11 think that's correct? 12 MS. SWAIN: Objection. 13 A I said I believe that's your 14 opinion. 15 Q No. I'm asking you do you think 16 that. Do you have an opinion? 17 A I believe that each individual 18 occurrence has to be looked at individually 19 based on the circumstances of that case, a 20 determination made as to why that occurred. 21 Q Well, sir, tell me, your -- then, 22 your definition of a sexually hostile 23 environment.</p>	<p style="text-align: right;">120</p> <p>1 THE WITNESS: Yes. 2 Q I had asked you about if -- if 3 she had been talking about him being a child 4 molester in the context of what was 5 happening to her and her belief that he -- I 6 didn't say this, but her belief that he had 7 total disrespect for women, why would you 8 take that out of the context of the other 9 kinds of -- of behavior? 10 A That wasn't the question you 11 asked. 12 MS. SWAIN: No. 13 Q All right. Well, tell me -- now 14 that I've rephrased it, tell me why would 15 you not have taken that? 16 MS. SWAIN: No, wait, wait. What 17 is the question? Ask it again. 18 A Ask the question, please. 19 Q The question is: Did you not 20 think it was important to find out what 21 context that Linda Thornton was saying that 22 Frank Williams had been a child molester and 23 to find out if she was talking about it in</p>

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<p style="text-align: right;">121</p> <p>1 the context of the way she was being treated 2 by Frank Williams? 3 MS. SWAIN: Objection. 4 A This investigation involved 5 statements being made, assumed statements 6 being made by Linda, that she was stating 7 that she had been telling people private 8 business, personal business, of Frank's, 9 whether it's public or private. That was 10 what this investigation initiated as, as an 11 investigation based on statements that she 12 was stating that -- private information or 13 personal information. 14 Q No. Because you don't know who 15 initiated it. She -- she -- she says that 16 she was -- that he was going around telling 17 people that -- that she came up -- that 18 people were being told by her that he was a 19 child molester and she said that was in the 20 context of after the discussion she had had 21 with Melvin Hutchins about the way Frank -- 22 her -- Frank Williams and his conduct on 23 line 3. Right?</p>	<p style="text-align: right;">123</p> <p>1 you know that she told Melvin Hutchins she 2 was concerned about the way he was treating 3 her because he was a child molester? 4 MS. SWAIN: Objection. 5 A I can't speak to what discussion 6 she had Melvin Hutchins. You'd have to ask 7 Melvin that. 8 Q Because you didn't ask Melvin 9 Hutchins and you didn't ask her; right? 10 MS. SWAIN: Objection. 11 Q Sir? 12 A Again, what's the question? 13 Q Did you ask her what discussions 14 she was referring to in Plaintiff's 11 when 15 she says, Immediately I met with Melvin 16 Hutchins and Chris Jordan with -- about this 17 matter. This is after a previous meeting 18 with Melvin Hutchins on the topic of many 19 concerns with Frank and line three work 20 situation. Did you ask her what she was 21 talking about? 22 A At the time of the investigation, 23 I probably did. Do I recall that --</p>
<p style="text-align: right;">122</p> <p>1 MS. SWAIN: Objection. 2 Q But you don't know what those 3 discussions were -- 4 MS. SWAIN: Objection. 5 Q -- that she had had with Melvin 6 Hutchins. Do you know that -- 7 MS. SWAIN: Objection. There's 8 no evidence of any discussions. 9 MS. ROBERTSON: Of course there 10 are. 11 A Again, I don't -- I don't 12 understand. That's -- I mean, her statement 13 said there were discussions. 14 Q All right. And did -- and did 15 you know that the discussions were that he 16 was upset because he was having marital 17 problems and he was talking dirty about what 18 was going on with his wife and that he 19 wasn't attending to his work because of -- 20 of his marital problems and that she did not 21 like it and she wanted it to stop? And the 22 next thing you know he's going around saying 23 that she's saying he's a child molester. Do</p>	<p style="text-align: right;">124</p> <p>1 Q But you don't have your notes -- 2 A Do I recall that, no. 3 Q -- and you don't recall it. 4 A You have to realize, Linda had 5 multiple meetings with multiple people all 6 the time. 7 Q And -- 8 A This was not a new occurrence for 9 Linda. 10 Q And she would get in trouble 11 every time she -- 12 A No, she wouldn't. 13 Q Well, did she -- 14 A We would investigate any 15 allegations that she brought forward and 16 then the correct -- correcting disciplinary 17 actions, if necessary or if warranted, would 18 be taken. 19 Q Who got in trouble about this 20 child molesting business? 21 MS. SWAIN: Objection. 22 Q Didn't you ultimately write her 23 up about it?</p>

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<p style="text-align: right;">125</p> <p>1 A You mean about the discussion of 2 the employee's private -- 3 Q The child molestation. 4 A -- or personal business? 5 Q Since when is a convicted -- a 6 felony -- 7 A I said personal business. I 8 corrected myself. 9 Q A felony conviction is his 10 personal business? 11 A It is personal to him, yes. 12 (Plaintiff's Exhibit Number 13 10 was marked for identification 14 and attached to the deposition.) 15 BY MS. ROBERTSON: 16 Q Plaintiff's Exhibit Number 10, 17 look at that. What is that, please, sir? 18 A This appears to be an employment 19 application for Frank Williams. 20 Q What in the world is Flavor House 21 asking Frank Williams about his personal 22 business when they ask him has he ever been 23 convicted of a felon?</p>	<p style="text-align: right;">127</p> <p>1 cause disruption-wise? Investigations and 2 pulling employees off of lines to do 3 investigations, to discuss allegations. So 4 it does cause a lot of disruption. How you 5 quantify that? Specifically, lost 6 productivity. 7 Q Anything else? 8 A Again, how do you want it 9 quantified? 10 Q Did you happen to check Frank 11 Williams' -- I mean his application, 12 Plaintiff's Exhibit Number 10, when this 13 issue about whether he was a child molester 14 came up? 15 A I would have probably pulled his 16 personnel file in any investigation that I 17 did -- 18 Q Okay. 19 A -- with any employee. 20 Q And what -- did -- what did you 21 read there? 22 A Relative to? 23 Q To whether or not he was a</p>
<p style="text-align: right;">126</p> <p>1 MS. SWAIN: Objection. 2 A That's public information -- 3 public conviction -- public conviction 4 record. 5 Q That's what Linda Thornton was 6 talking about. How is it not personal when 7 she's -- wait -- personal when she's talking 8 about it and not personal when Flavor House 9 is asking him about it? 10 A It's disruptive to the 11 environment to discuss personal issues in 12 the environment, in -- in the workplace. 13 There's an issue of disruption that it 14 causes to the work force. It's not an issue 15 of public knowledge. It's an issue that it 16 is public knowledge as it is. It's public. 17 But her discussing that is his personal 18 business and it's causing disruption within 19 the work force. 20 Q What kind of disruption was it 21 causing? 22 A It can cause loss of 23 productivity. Specifically what did it</p>	<p style="text-align: right;">128</p> <p>1 convicted felon. 2 A He checked yes. 3 Q Okay. And -- and what did he say 4 he had been convicted of? 5 A On this application he stated 6 statutory rape. 7 Q And you understand -- and then 8 what did he say? 9 A His statement here is my 10 girlfriend was two years younger than me 11 when -- 12 Q When I was 18. 13 A -- I was 18. 14 Q Did you do a background check at 15 the time to see if he told you the truth 16 about that? 17 MS. SWAIN: Objection. 18 Q Because over here on 19 Plaintiff's -- Plaintiff's 10, see the 20 back -- see the bottom there? It says 21 you -- they're going to do a background 22 check. 23 A I'm not sure of the policies that</p>

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<p style="text-align: right;">129</p> <p>1 were in place in 2000.</p> <p>2 Q No, no, no. Excuse me. Read --</p> <p>3 I'm talking about the bottom of the</p> <p>4 application. You have -- you may not can</p> <p>5 read it. It's a trial. But see at the very</p> <p>6 bottom?</p> <p>7 A It says, I understand that</p> <p>8 consideration for employment in this</p> <p>9 position is contingent upon the results of a</p> <p>10 reference and a background check.</p> <p>11 Q I'm sorry. He has to type it.</p> <p>12 If you could read it a little slower,</p> <p>13 please. Slower.</p> <p>14 A I understand that consideration</p> <p>15 for employment in this position is</p> <p>16 contingent upon a reference and a background</p> <p>17 check.</p> <p>18 Q All right. Does it say anything</p> <p>19 else?</p> <p>20 A I mean, I can read the entire</p> <p>21 statement, if you'd like me to.</p> <p>22 Q Anything to do with the</p> <p>23 background check or anything about not</p>	<p style="text-align: right;">131</p> <p>1 Q Why not?</p> <p>2 A I did not see the need to based</p> <p>3 on his five years of employment with the</p> <p>4 company and his admittance of the charges</p> <p>5 previously. There was no question as to</p> <p>6 whether he was guilty or convicted.</p> <p>7 Q Of -- of what he said? That's</p> <p>8 not true, though, what he said. Do you know</p> <p>9 that --</p> <p>10 MS. SWAIN: Objection.</p> <p>11 Q -- now?</p> <p>12 A I don't know Frank's background.</p> <p>13 I never ran a background check.</p> <p>14 Q Never did anything to find out</p> <p>15 about it?</p> <p>16 A I did not run a background check</p> <p>17 on Frank based on his acknowledgement that</p> <p>18 he was convicted previously.</p> <p>19 Q Okay. Of child molestation?</p> <p>20 MS. SWAIN: Objection.</p> <p>21 A I don't recall the specific</p> <p>22 conviction he stated to me or specifically</p> <p>23 what's on the form.</p>
<p style="text-align: right;">130</p> <p>1 telling the truth on the application?</p> <p>2 A The first statement, I</p> <p>3 acknowledge that the information I have</p> <p>4 supplied is correct to the best of my</p> <p>5 knowledge and belief without any omission of</p> <p>6 any kind whatsoever.</p> <p>7 Q Up here where it says, I</p> <p>8 acknowledge that the information that I have</p> <p>9 supplied is correct to the best of my</p> <p>10 knowledge and belief without any omissions</p> <p>11 of any kind whatsoever; I understand that</p> <p>12 any falsification, misrepresentation, or</p> <p>13 omission of fact may be grounds for</p> <p>14 rejection of my application or discharge of</p> <p>15 any time of my employment, did -- did you --</p> <p>16 at the time that there was this issue about</p> <p>17 whether or not Frank was a child molester --</p> <p>18 and apparently -- did you have -- institute</p> <p>19 a background check to find out if he had</p> <p>20 completely told the truth about his felony</p> <p>21 background?</p> <p>22 A I did not perform a background</p> <p>23 check on Frank Williams, no.</p>	<p style="text-align: right;">132</p> <p>1 Q In Plaintiff's 12, it says, I</p> <p>2 don't like it -- I don't start trouble.</p> <p>3 What happened 15 years ago is none of her</p> <p>4 business. And the -- he says she said that</p> <p>5 he -- that she was saying he was a child</p> <p>6 molester. So he admitted to being a child</p> <p>7 molester?</p> <p>8 MS. SWAIN: Objection. You don't</p> <p>9 need to answer that.</p> <p>10 Q Well, let me just -- just for my</p> <p>11 own edification, would you consider</p> <p>12 having -- sodomizing a 10-year-old as child</p> <p>13 molestation?</p> <p>14 MS. SWAIN: Objection.</p> <p>15 A I'm not a court of law. I'm not</p> <p>16 going to determine what is or is not a</p> <p>17 conviction or -- or --</p> <p>18 Q No. I didn't ask you was it a</p> <p>19 conviction. I asked you would you consider</p> <p>20 your -- if you had a 10-year-old daughter</p> <p>21 that a 27-year-old man had oral sex with,</p> <p>22 would you consider that child molestation?</p> <p>23 MS. SWAIN: Objection.</p>

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<p style="text-align: right;">133</p> <p>1 A Again, it's not my call. That's 2 my -- I don't write the laws. 3 Q And you would have no opinion of 4 that as a -- as a father of a child? 5 A As an opinion, I can give you an 6 opinion, yes. 7 Q That's what I'm asking for. 8 A But opinions aren't -- is not the 9 law. 10 Q Oh. And I -- I didn't remember 11 on your -- on your -- your resume saying 12 got -- that you had gotten a law degree. 13 A That's correct. 14 Q And you -- and you just told me 15 -- 16 A And I don't. 17 Q -- you don't know -- well, then, 18 why would you tell me that your opinion is 19 not the law? I asked you for your own 20 opinion as to whether -- 21 A My opinion is irrelevant. The 22 facts are the facts. 23 Q Okay. Now -- but do you have an</p>	<p style="text-align: right;">135</p> <p>1 Q I'm not asking about what their 2 opinion is. I'm asking your opinion. 3 A Again, based on the -- an 4 individual situation if I independently 5 evaluated a situation and I had an opinion 6 on it. 7 Q Okay. Well -- all right. Tell 8 me, sir, circumstances under which having 9 oral sex with a 10-year-old if you're 20 -- 10 over 20 -- 11 MS. SWAIN: Can we take a break? 12 MS. ROBERTSON: Sure. 13 THE VIDEOGRAPHER: We're off at 14 12:05. 15 (Whereupon, a short break was taken.) 16 THE VIDEOGRAPHER: Okay. We are 17 back on at 12:14. 18 MS. ROBERTSON: Is there a 19 question on the table, Mr. court 20 reporter? 21 (Whereupon, the court 22 reporter read the pending 23 question.)</p>
<p style="text-align: right;">134</p> <p>1 opinion? 2 A On what? 3 Q On whether having oral sex with a 4 10-year-old is child molestation. 5 MS. SWAIN: Objection. 6 A My opinion would -- would be 7 based on the facts determined in an 8 investigation. 9 Q Assume that Frank Williams pled 10 guilty. 11 A Again, I'm not assuming anything. 12 Q Are you refusing to answer my 13 question? 14 A No, ma'am. 15 Q Well, then, assume that Frank 16 Williams was convicted of having oral sex 17 with a 10-year-old. Would you, Mr. Tommy 18 Nance, consider that child molestation? 19 MS. SWAIN: Objection. 20 A I would abide by what the courts 21 decided. If they convicted him of a 22 specific crime, then that is their opinion 23 as the courts.</p>	<p style="text-align: right;">136</p> <p>1 MS. ROBERTSON: And then he asked 2 -- 3 THE COURT REPORTER: Can we take 4 a break. 5 MS. ROBERTSON: I kindly let him 6 have a break in the middle of a 7 question. 8 BY MS. ROBERTSON: 9 Q Okay. I'll withdraw that 10 question and start over. Tell me, 11 Mr. Nance, under what circumstances can you 12 imagine that it would ever be all right or 13 not child molestation for a 20-something 14 person to have oral sex with a 10-year-old. 15 MS. SWAIN: Objection. 16 A I do not believe that child 17 molestation is a good thing, but 18 determination of what child molestation is, 19 again, is a legal issue, the definition of 20 it. 21 Q Okay. But all I'm asking you is 22 can -- you had said immediately before I let 23 them take a break and take you outside</p>

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<p style="text-align: right;">137</p> <p>1 that -- that you had to look at each 2 individual circumstance and make a decision 3 when I was asking for your opinion, not the 4 laws of -- and you said you had to look at 5 each individual situation. And I want you 6 to tell me, in your wildest imagination can 7 you imagine or can you think of a situation 8 where a 20-something year old having oral 9 sex with a 10-year-old would not be child 10 molestation. 11 MS. SWAIN: Objection. 12 A Again, in my opinion, if that 13 occurred, would it be child molestation? 14 I -- I couldn't tell you yes or no, 15 determined on what the court case determines 16 is whether it's declared as child 17 molestation or not. 18 Q I got you. 19 (Plaintiff's Exhibit Number 20 13 was marked for identification 21 and attached to the deposition.) 22 BY MS. ROBERTSON: 23 Q Tell me what this is, sir.</p>	<p style="text-align: right;">139</p> <p>1 the person in the front office. 2 Q Well, why didn't you get 3 documentation forms from these people? 4 A Again, if they gave statements, 5 they -- they would have given statements. 6 Q All right. Well, are there any 7 statements that you can think of that -- 8 that you would have gotten? 9 MS. SWAIN: Objection. 10 A I -- I don't have records that 11 were kept. I don't know. 12 Q Well, would ordinarily Chris 13 Jordan have gone and given the documentation 14 forms to anybody that my client said was a 15 witness? 16 A A member of management would have 17 given the documentation form and asked for a 18 statement from anyone identified, but they 19 do not have to give a statement. 20 Q Well, where -- can you think of 21 any place that document -- that statement 22 would be, if not in -- in Linda's file? 23 A Statements were kept in</p>
<p style="text-align: right;">138</p> <p>1 A This is Linda Thornton's 2 statement from March 1st, '06. It's got a 3 statement of threats being made, comments 4 being made, to another employee. 5 Q By Frank Williams? 6 A Linda states that the team leader 7 made -- has told comments against her to 8 another employee. 9 Q And threats? 10 A She states very serious comments 11 and threats made, yes. 12 Q Okay. I just want this to be 13 over with, which I believe is what it would 14 be after last week's meeting with Tommy in 15 HR. These threats and comments were made to 16 an employee in the front office. 17 Did you receive this? I guess Chris 18 Jordan took the statement. What did you do 19 when you received Plaintiff's Exhibit Number 20 13? 21 A Again, form an investigation as 22 usual, question Linda, I'm sure, question 23 the other employee, whoever was mentioned,</p>	<p style="text-align: right;">140</p> <p>1 individuals' files so I don't know of any 2 other place, no. 3 (Plaintiff's Exhibit Number 4 14 was marked for identification 5 and attached to the deposition.) 6 BY MS. ROBERTSON: 7 Q Plaintiff's Exhibit Number 14, 8 what is this, sir? 9 A This is the memo to file, 10 disciplinary action for Linda Thornton 11 related to the February 16th comments. 12 Q What is the date on it? 13 A This was issued on March 7th. 14 Q What, six days after Plaintiff's 15 Exhibit Number 13 came in from Linda 16 Thornton? 17 A It appears that's when it was 18 signed, yes, when it was issued. 19 Q Well, tell me how it was that 20 Linda makes a complaint on March the 1st and 21 she ends up getting written up for something 22 that happened in February. 23 MS. SWAIN: Objection.</p>

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<p style="text-align: right;">141</p> <p>1 A I don't recall the specific time 2 frame for the investigation that occurred. 3 It could have been later due to vacations or 4 absences, due to key people I was talking 5 with. I don't know why the lapse between 6 2/16 and March 7th. I can't tell you 7 specifically why that occurred, no. 8 Q Well, it -- it says here in her 9 Plaintiff's Exhibit Number 13 that -- 10 that -- that there had been some meetings 11 with Tommy and HR about this allegation of 12 this child molestation. Do you recall those 13 meetings? 14 MS. SWAIN: Objection. 15 A The assumption may be she's 16 referring to the investigative meetings. 17 I -- I don't know what meeting she's 18 referring to. 19 Q Well, when you said you had 20 determined that -- that she had acted in an 21 inflammatory and -- and I must criticize 22 your English -- I have determined that you 23 acted in a way that was inflammatory and</p>	<p style="text-align: right;">143</p> <p>1 She was complaining that Frank was 2 making threats about what he was going to do 3 to her; right? 4 MS. SWAIN: Objection. 5 A I don't -- I don't know what 6 those allegations were, what her -- 7 Q You don't remember -- 8 A -- comments were. 9 Q -- any -- any of -- did you have 10 a conversation with her? 11 A I investigate every statement 12 that comes in, every documentation form, 13 yes. 14 Q My question is, did you have a 15 conversation with her after you received 16 Plaintiff's 13 about what kind of threats 17 were being made? 18 A I don't recall specific 19 conversations I've had about the 20 investigations. 21 Q I didn't ask you about the 22 specifics. I asked you did you have a 23 conversation.</p>
<p style="text-align: right;">142</p> <p>1 instigationally. What did she instigate? 2 A Disruptive behavior. 3 Q Disruptive behavior which 4 instigated what, Frank making threats? 5 MS. SWAIN: Objection. 6 A Linda's discussion of personal 7 business caused conflict in the work force. 8 Q Did it cause Frank to make her 9 threats? 10 MS. SWAIN: Objection. 11 A Again, just the disruptions of 12 the work force is noted. It's -- 13 Q No, no, no, no. She complained 14 that he was making threats about what -- 15 about what he was going to do to her and 16 then -- 17 A Which complaint are you referring 18 to there? Tell me. 19 Q I'm referring to Plaintiff's 20 Exhibit Number 13. Repeatedly has been told 21 of comments that team leader has made 22 against me after -- one after investigation. 23 Various serious comments and threats made.</p>	<p style="text-align: right;">144</p> <p>1 A We probably did. If a statement 2 was turned in, then there was a follow-up 3 investigation. 4 Q But you don't remember anything 5 about it? 6 A That's why I have notes. 7 Q Which we don't have; is that 8 right? 9 A (No response.) 10 Q You don't remember any -- you 11 need to answer out loud for this court 12 reporter. 13 A There was no answer. The notes 14 aren't here. 15 Q And you have no memory? 16 A I don't rely on my memory to 17 differentiate between which specific 18 conversation I had on which specific day 19 over a multitude of a year and multiple 20 conversations but -- 21 Q Well, my -- whether you can 22 remember whether it had anything to do 23 with -- did you ever have a conversation</p>

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<p style="text-align: right;">145</p> <p>1 with Linda about whether Frank was making 2 threats against her? 3 A I'm sure I did. 4 Q Okay. And why are you sure you 5 did? 6 A During the course of the 7 investigation, if she said there are threats 8 being made, I would have questioned her on 9 what those threats were. 10 Q So you're sure you did but it's 11 not because you remember any conversation, 12 whether it was then or any time. You just 13 are sure you did because she made a 14 complaint and you would have investigated 15 it? 16 A I would have investigated 17 anything in the statement, yes. 18 Q Okay. Do you remember what she 19 said the threats were? 20 A Not from memory, no. 21 Q Do you remember that he was going 22 around saying he was going to fuck her up if 23 she -- if he lost his job by her saying that</p>	<p style="text-align: right;">147</p> <p>1 CERTIFICATE 2 3 STATE OF ALABAMA: 4 COUNTY OF BUTLER: 5 6 I hereby certify that the above and 7 foregoing deposition was taken down by me in 8 stenotype and the questions and answers 9 thereto were transcribed by means of 10 computer-aided transcription, and that the 11 foregoing represents a true and correct 12 transcript of the testimony given by said 13 witness upon said hearing. 14 I further certify that I am neither of 15 counsel, nor of kin to the parties to the 16 action, nor am I in anywise interested in 17 the result of said cause. 18 19 20 RENNY MCNAUGHTON 21 Certified Court Reporter 22 License Number: ACCR #:411 23</p>
<p style="text-align: right;">146</p> <p>1 he was a child molester? 2 MS. SWAIN: Objection. 3 A I don't recall those specific -- 4 it's not in statements. 5 Q You have no recollection of -- of 6 her complaining about that? 7 A No, I do not. 8 MS. ROBERTSON: That's all I 9 have. 10 MS. SWAIN: Can we take a short 11 break? I may have a few questions. 12 THE VIDEOGRAPHER: We're off at 13 12:34. 14 (Whereupon, a short break was taken.) 15 DEPOSITION CONCLUDED 16 17 18 19 20 21 22 23</p>	

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EXHIBIT C

(Part 2 of 2)

SECTION 4

GOAL SETTING

BUSINESS/DEVELOPMENTAL GOALS

Goals are to be developed by the individual and the supervisor. Goals should be measurable, obtainable, and challenging and should cascade from those goals established at the corporate and departmental level. The individual and the supervisor must mutually agree to the derived goals. Goals must be developed in coordination with corporate, departmental, and individual business/developmental views in mind. Goals should be modified if they are changed during the review process.

You and your supervisor should discuss the relative importance goal attainment and skill set performance and development will have in determining our overall performance rating for this review period.

1. GOAL

Maintain a level FTE (Full Time Employee) base that keeps temps minimized to 10-20, excluding gift pack.

ACTION STEPS

Working with Production maintains a staffing grid that is monitored weekly that shows where openings exist. Trigger hiring to keep up with the level of attrition.
Monitor the employees that are "at risk", due to attendance or performance as part of the hiring trigger.
Develop a relationship with several community venues beyond the Unemployment office to tap into employees; Career Services, Work Release program, University Career offices, Hispanic, etc...

2. GOAL

Primary coordinator for the employee training process, both hourly and Salaried.

ACTION STEPS

Develop a training program for new salaried hires to cover basic job knowledge. This needs to be completed by QF2 for Sasha, Harrel, Fred, Wiley, Jeff and Donald.
Pick up information already collected by David Helms, solicit more information from the Dept. Managers and submit the training grant application that is available from the Career Services Office.
Enhance the current new employee orientation.
Working with Production creates a cross training/back up training process for critical positions; Roaster, Label machine, Filler, etc...

3. **GOAL**

Assess and then develop the current HR department into what is best for the Dothan site.

ACTION STEPS

Assess and review both the roles currently filled by Leigh and Vera.
Ensure that all duties that are needed at this site are performed by the department.
Complete the job description assessment, including review of Grade level and discuss with incumbents by Jan 2006.

4. **GOAL**

Development of an hourly incentive program ready to implement Oct 2006/fiscal 07.

ACTION STEPS

Working as a team with Finance, Operations and Divisional develop an incentive program that will be paid out quarterly and be tied directly to budgeted performance.
This must be drafted and ready for presentation for approval by the end of F'06 QF3.

5. **GOAL**

Ensure that all Bremner/Ralcorp policy and procedure is implemented at the Dothan facility

ACTION STEPS

Working with Alice Clark and Steve Smith will get an understanding of what has/has not been implemented in the last year. Complete the implementation of those still in place and ensure that administration of existing policy is correct.

6. **GOAL**

Achievement of Plant Safety goals

ACTION STEPS

Vernon James, Plant Safety Manager reports to HR and will have primary responsibility to ensure that all proactive programs are being executed as targeted.
Ensure that appropriate follow up is being conducted on all existing accidents and challenges are being made where possible to keep WC costs minimal.

7. GOAL

Complete all activities as outlined on HR Dothan Action Plan

ACTION STEPS

See attached document.

A few of the items on this document are separately listed as goals above.

EMPLOYEE SIGNATURE

Terry Mann

DATE

12/15/05

MANAGER SIGNATURE

Mary Ann Bayer

DATE

12-15-2005

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FH000739



RALCORP HOLDINGS, INC.

F'06 Goals

EMPLOYEE INFORMATION

NAME OF EMPLOYEE: Tommy Nance

**BUSINESS
UNIT/DEPARTMENT:** Dothan Operations

JOB TITLE: HR Manager

DATE OF LAST REVIEW: None This is a goal setting document only

Revised: 7/98 - Final

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FH000740

GOAL SETTING

SECTION 4

BUSINESS/DEVELOPMENTAL GOALS

Goals are to be developed by the individual and the supervisor. Goals should be measurable, obtainable, and challenging and should cascade from those goals established at the corporate and departmental level. The individual and the supervisor must mutually agree to the derived goals. Goals must be developed in coordination with corporate, departmental, and individual business/developmental views in mind. Goals should be modified if they are changed during the review process.

You and your supervisor should discuss the relative importance goal attainment and skill set performance and development will have in determining our overall performance rating for this review period.

1. GOAL

Maintain a level FTE (Full Time Employee) base that keeps temps minimized to 10-20, excluding gift pack.

ACTION STEPS

Working with Production maintains a staffing grid that is monitored weekly that shows where openings exist. Trigger hiring to keep up with the level of attrition.
Monitor the employees that are "at risk", due to attendance or performance as part of the hiring trigger.
Develop a relationship with several community venues beyond the Unemployment office to tap into employees; Career Services, Work Release program, University Career offices, Hispanic, etc...

2. GOAL

Primary coordinator for the employee training process, both hourly and Salaried.

ACTION STEPS

Develop a training program for new salaried hires to cover basic job knowledge. This needs to be completed by QF2 for Sasha, Harrel, Fred, Wiley, Jeff and Donald *Samuel X*
Pick up information already collected by David Helms, solicit more information from the Dept. Managers and submit the training grant application that is available from the Career Services Office.
Enhance the current new employee orientation.
Working with Production creates a cross training/back up training process for critical positions; Roaster, Label machine, Filler, etc...

QF37 End of June

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FH000741

3. GOAL

Assess and then develop the current HR department into what is best for the Dothan site.

ACTION STEPS

Assess and review both the roles currently filled by Leigh and Vera.
Ensure that all duties that are needed at this site are performed by the department.
Complete the job description assessment, including review of Grade level and discuss with incumbents by Jan 2006. ~~222 6/10/06~~

Database Aug 1st

4. GOAL

Development of an hourly incentive program ready to implement Oct 2006/fiscal 07.

ACTION STEPS

Working as a team with Finance, Operations and Divisional develop an incentive program that will be paid out quarterly and be tied directly to budgeted performance.

This must be drafted and ready for presentation for approval by the end of F'06 QF3. - MAB needs to initiate.

5. GOAL

Ensure that all Bremner/Ralcorp policy and procedure is implemented at the Dothan facility

ACTION STEPS

Working with Alice Clark and Steve Smith will get an understanding of what has/has not been implemented in the last year. Complete the implementation of those still in place and ensure that administration of existing policy is correct.

Handbook May 15th

6. GOAL

Achievement of Plant Safety goals

ACTION STEPS

Tracking well.

Vernon James, Plant Safety Manager reports to HR and will have primary responsibility to ensure that all proactive programs are being executed as targeted.
Ensure that appropriate follow up is being conducted on all existing accidents and challenges are being made where possible to keep WC costs minimal.

Training Session for Supervision

Emergency Action Plan Roll out

7. GOAL

Complete all activities as outlined on HR Dothan Action Plan

ACTION STEPS

-Refer to Action Plan

See attached document.

A few of the items on this document are separately listed as goals above.

EMPLOYEE SIGNATURE _____ DATE _____

MANAGER SIGNATURE _____ DATE _____

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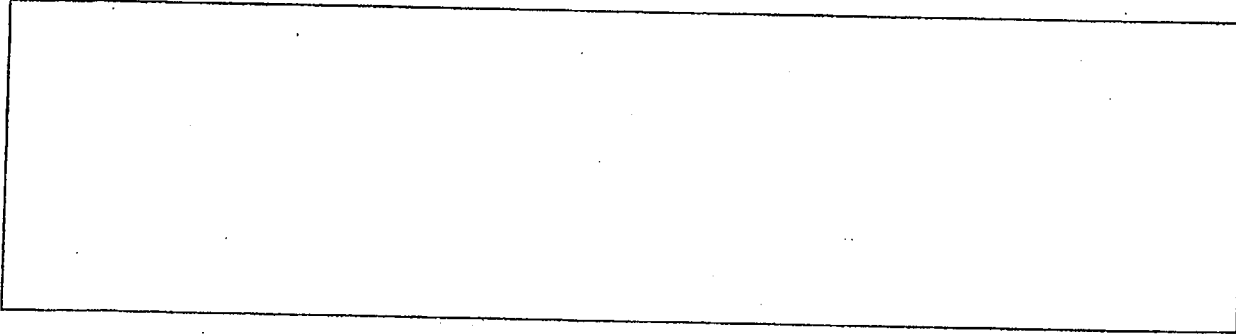
FH000743

**EMPLOYEE'S ASSESSMENT
(Optional)**

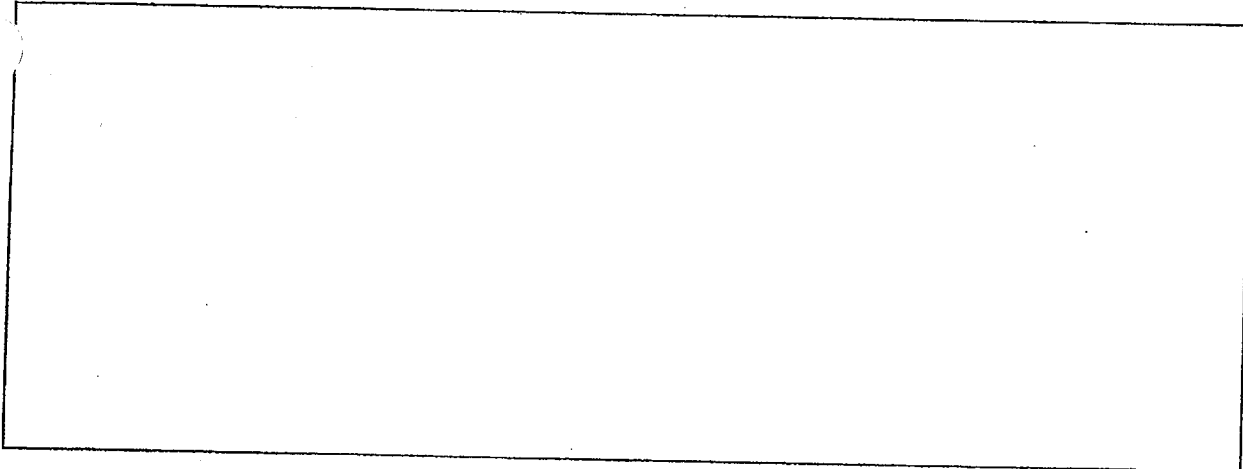
SECTION 5

Employees are encouraged to provide their candid assessment of the evaluation and the evaluation process. Please be specific. Forward the completed Assessment form to your locations' HR Dept (29R for St. Louis based employees).

How well do you believe the evaluation accurately reflects your performance during the review period?



Overall reaction to the performance review process. *(Please note those areas which you believe to be strengths and those where improvement is needed.)*



EMPLOYEE SIGNATURE: _____

DATE: _____

An Employee may appeal the results of the performance review. The appeal may be made with your Manager, Manager's Supervisor, Department Head or a member of the Human Resource staff.

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FH000744

**Dothan
Human Resources
Action Plan
FY06**

Category	Item	Action Steps	Target Complete Date	Status	Comments	
Safety	Conduct Safety Inspections	All employees complete one per week	1/1/06	Ongoing	Some teams participating	Update Comments 04/17/06 Per Vernon - now at 100%, but will be an ongoing process
	Implement Safety Observations	All managers complete one per week	1/1/06	Ongoing	Some teams participating	STOP will start April 13
	Develop Master Training agenda	Vernon conducts "Train the Trainer with supervisors who train their employees	12/5/05	Complete	Must ensure quality of training as passed on. Vernon to supplement with training videos/material from other locations	Complete
	Tool box talks	Conducted weekly on all teams	12/5/05	Complete		Complete
	Disciplinary Action	Utilize disciplinary action to drive seriousness of safety violations	12/5/05	Ongoing		Ongoing
	Emergency Responders	Identify and train Responders. Treat minor injuries on site.	2/1/06	Complete	Team trained in First Aid during November. Will train in CPR by February 1, 06	Complete
	Accident response procedure	Detailed procedure to manage the relationship with the physicians and ER to minimize recordability	12/5/05	Complete	Have met with common medical providers regarding company expectations and light duty program. Member of management accompanies all Dr. visits.	Complete
	Safety Committee	Re-establish the plant safety committee. Drive interest and participation from all areas of the plant.	12/5/05	Ongoing	Currently posting for new members to serve specific terms - specifically hourly employees. Have committees for 1st and 2nd shifts. They meet once/month. Involve them in accident investigations and JTF development, immediately.	Always ongoing.
	Accident reviews - management team	Accident investigations completed within 24 hours of incident. Management review within 48 hours.	12/5/05	Ongoing		Ongoing
	Management Involvement	Participate in observations, inspections, and accident investigations	12/5/05	Ongoing		Ongoing

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FH000745

**Dothan
Human Resources
Action Plan
FY06**

Category	Item	Action Steps	Target Complete Date	Status	Comments
	Emergency Action Plan		2/20/06	Complete	Update Comments 04/17/06 Complete/ will revise and review
	Plant Security		2/16/06	Complete	Completed with Glenn Warren
	Revised hourly handbook	Policies revised and communicated	1/31/06	In progress	Targeted Reprint by May
Culture	Scorecards	Develop an action	2/28/06	In progress	Working on communication and training / ONGOING
		Share results from last meeting	2/28/06	Complete	Complete
	Buddy system	Implement formal Buddy system for new hires	2/28/06	In progress	Still Developing Program
	Improve facilities where possible	Break room, housekeeping, etc.	9/30/06	In progress	On going
	Communications	Update/Replace bulletin boards, conduct monthly communication meetings	1/31/06	In progress	On going

Warren - Mid June

Aug 1st

*Capital Budget
Dothan may 15th
To 11th 1 Risk - Vols
Head UP*

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FH000748



RALCORP HOLDINGS, INC.

F'06 Goals

EMPLOYEE INFORMATION

NAME OF EMPLOYEE: Tommy Nance

BUSINESS
UNIT/DEPARTMENT: Dothan Operations

JOB TITLE: HR Manager

DATE OF LAST REVIEW: None This is a goal setting document only

Revised: 7/98 - Final

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FH000736

PLAINTIFF'S
EXHIBIT

2

DOCUMENTATION FORM

Employee Name: ~~Frank Williams~~ ~~Frank Williams~~ Frank Williams

Investigating Supervisor: _____ Date: _____

Present: Mary Brooks

Who was involved: me + Linda Thurton

Witness (s): _____

Date of incident: 6-14-06

Where did it take place: Line 3

When did it take place (time and day): 11:15 Am Wed.

What happened: Linda was having problems out of label machine so she just told me she was going to Break. I let her go but I was still having trouble with the machine. I finally got it fixed and Chris came around and told me to take out a Big Bag of Cans that was sitting on Line 3. had a lot of Bad Labels but was trying to work them in. Linda came back off Break. I was going to do what Chris had said then go back and (over)

Did this result in down time? _____ If yes how much?

Did this result in product being scrapped? If yes how much?

Attach an additional sheet if needed for witness statements following the same format.

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FH000804

sick and help with the table. But when I went to go Linda yelled at me to help her get the rework. I told her that Chris had already told me to do something else and I would help her when I got through. She told me that was my ~~rework~~ ^{rework} and I had to stay and help get it done. I told her I could not I had to do something I was told to do. She got an attitude. I ~~put~~ put my hand in the air turned around and walked off. I had got very upset so instead of saying something that would get me in trouble I walked away.

John Lee

EEOC FORM 131 (5/01)

U.S. Equal Employment Opportunity Commission

Department of Human Resources
 FLAVOR HOUSE PRODUCTS, INC
 2700 Horace Shepard Road
 Dothan, AL 36303

**PLAINTIFF'S
 EXHIBIT**

3

PERSON FILING CHARGE

Linda Thornton

THIS PERSON (check one or both)



Claims To Be Aggrieved



Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

420-2006-05107

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:



Title VII of the Civil Rights Act



The Americans with Disabilities Act



The Age Discrimination in Employment Act



The Equal Pay Act

The boxes checked below apply to our handling of this charge:

1. ☐

No action is required by you at this time.

2. ☐

Please call the EEOC Representative listed below concerning the further handling of this charge.

3. ☒

Please provide by **26-OCT-06** a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.

4. ☐

Please respond fully by _____ to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.

5. ☒

EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by

11-OCT-06

to **Debra B. Leo, ADR Coordinator, at (205) 212-2033**If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Deidre J. Rivers,
 ADR Assistant

EEOC Representative

Telephone **(205) 212-2146**

Birmingham District Office
 Ridge Park Place, Suite 2000
 1130 22nd Street, South
 Birmingham, AL 35205

Enclosure(s): ☒ Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION



RACE



COLOR



SEX



RELIGION



NATIONAL ORIGIN



AGE



DISABILITY



RETALIATION



OTHER

See enclosed copy of charge of discrimination.

Date

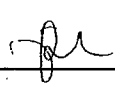
September 26, 2006

Name / Title of Authorized Official

Bernice Williams-Kimbrough,
 District Director

Signature

FILE 0071



LINDA THORNTON V. FLAVOR HOUSE -
 PLAINTIFF'S RFP DOCS 0146

CHARGE OF DISCRIMINATION		ENTER CHARGE NUMBER
This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form.		<input checked="" type="checkbox"/> EEOC 420 2006 05187
(State or local Agency, if any) _____ and EEOC		
NAME (Indicate Mr., Ms., or Mrs.) Linda Thornton		HOME TELEPHONE NO. (Include Area Code) 334-693-4488
STREET ADDRESS 100 Armstrong Street	CITY, STATE AND ZIP Headland, AL 36345	COUNTY Henry
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)		
NAME Flavor House Products, Inc.	NO. OF EMPLOYEES/MEMBERS Over 15	TELEPHONE NO. (Include Area Code) 334-983-5643
STREET ADDRESS 2700 Horace Shepard Road	CITY, STATE AND ZIP Dothan, AL 36303	COUNTY Houston
NAME		TELEPHONE NO. (Include Area Code)
STREET ADDRESS	CITY, STATE AND ZIP	COUNTY
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es): <input type="checkbox"/> Race <input type="checkbox"/> Color <input checked="" type="checkbox"/> Sex <input type="checkbox"/> Religion <input type="checkbox"/> Age <input type="checkbox"/> Disability <input type="checkbox"/> National Origin <input checked="" type="checkbox"/> Retaliation <input type="checkbox"/> Other		DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, year) June 16, 2006
THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s):		
Social Security Number: <u>078-62-7979</u> Date of Birth: <u>5-16-64</u> Sex: <u>Female</u> Race: <u>Caucasian</u>		
I, Linda Thornton, began working for Flavor House Products, Inc. on or about June 25, 2001. While employed at Flavor House, I suffered sexual discrimination and retaliation. The sexual discrimination started during my first year of employment with Flavor House and continued throughout my employment. I was forced to resign my position with Flavor House on or about June 21, 2006, following my complaints to management of sexual discrimination and harassment.		
<input checked="" type="checkbox"/> I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - (When necessary to meet State and Local Requirements)
I declare under penalty of perjury that the foregoing is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
Date <u>09-15-06</u> <u>Linda Thornton</u> Charging Party (Signature)		SIGNATURE OF COMPLAINANT <u>Linda Thornton</u> SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year) <u>September 8, 2006</u>

LINDA THORNTON V. FLAVOR HOUSE -
PLAINTIFF'S RFP DOCS 0147

Page 2 EEOC Charge

Name: Linda ThorntonSocial Security #: 078-62-7979Date: 9-15-06

So much has happened that I cannot possibly set out everything, but the following is a brief summary of the sexual discrimination and/or harassment that I was subjected to while employed at Flavor House Products, Inc.

During my first year of employment, I repeatedly tried to get a promotion to "Label Operator". I was passed over several times and the position was given to temporary male employees with less or no experience. Unlike the male employees, I was required to provide a resume listing my mechanical experience before I was given the position. The discrimination continued even after I received the position in that I did not receive the training that the male operators/employees received. Additionally, the mechanics, all male, and other male employees made derogatory comments about me working "in a man's job." The mechanics did not like for me to make adjustments to my machine. If I took longer than 5 minutes to make adjustments, they would push me out of the way and make the adjustments or they would call the male supervisor over to make the adjustments. However, the male operators made adjustments that took longer than five minutes and nothing was said. I suffered this discriminatory treatment from the time I was put in the Label Operator position until I was forced to resign. My supervisor was aware of the discriminatory treatment; however, he did nothing to stop the discrimination. I also made numerous complaints to Marianne Boyer, Director of Operations, about the sexually discriminatory work environment that the female employees, including myself, were forced to work in on a daily basis. I told her that the mechanics, who are all male, cursed at and yelled at the female employees and that they called the female employees derogatory names. I reported to her that the mechanics would not allow the female operators to make minor repairs on their machines, but did not say anything when male employees made the same or similar repairs. However, Boyer's typical response to my complaints was to tell me that I would have to "deal with it" as she had learned to "deal with it" and then gave me two examples of discrimination she had to "deal with" in the company.

The first time I worked with Frank Williams was sometime in 2003. He was supposed to help me learn how to run his machine. I worked with him for three to four weeks. During that time, he yelled at me and cursed me. He also called me a "fucking stupid bitch". I complained to Melvin Hutchins, a member of management, but Hutchins told me that Williams was the only one that knew how to run the machine so I would just have to get along with him. I didn't work with Williams again until the beginning of 2006. I applied for a position as Line 3 Label Operator and received the position. Williams was not in the department when I applied; however, he was moved to the department shortly afterwards as the Team Leader. From then until I was forced to resign, Williams treated me in a discriminatory and demeaning manner. He yelled at me and cursed at me every day. Williams constantly talked about his sex life with his wife. He talked about how often he had sex, how they had sex, where they had sex, and how often they had sex. He even said he could tell his wife was cheating on him because of the way she "felt" when they had sex. Williams was also very vocal about the fact that he was a registered sex offender. I complained about Williams and his discriminatory treatment many times. I complained to Hutchins and Chris Jordan, Supervisor. They told me it would be taken care of, but to my knowledge, nothing was ever done as Williams' discrimination continued. A few months before I was forced to leave my employment, I was written up for telling another employee that Williams was a registered sex offender even though Williams made this statement himself almost every day. At first I was called in and told not to discuss Williams history although he discussed it everyday. I was told that the matter would be dropped, but if I discussed his criminal history again, I would be written up. A few days later, another female employee told me that Williams was making threats to hurt me. I reported these threats to management and was written up for discussing Williams history after being told not to talk about it. The employee that told me about the threats was fired shortly afterwards. Williams was the reason I was forced to resign my position with Flavor House.

On or about June 14, 2006, I was operating the label machine on Line Three, my usual position. Williams took over my machine during my break. When I came back, Williams was re-loading my machine with labels. I saw that the

Page 3 EEOC Charge

Name: Linda Thornton
Social Security #: 078-62-7979
Date: 09-15-06

paperwork had not been done while I was on break so I started on it to get caught up. There was also an overflow of re-work that needed to be done and a box full of bad labels that had to be re-done. As the company was having an important audit done that day, I asked Williams to help me with the re-work when he walked by. Williams turned around and shouted at me that he had "better mother-fucking things to do than fucking re-work." Williams continued to yell at me and kept repeating, "God damn mother fucker" at me. I tried to ignore him. Williams walked to the outside of the line and continued to yell at me. While still yelling "God damn mother-fucker" at me, he began picking up pallets and slamming them down. He also picked up a large bag of trash and threw it. By this time, a line mechanic had walked up and I asked him several times to call a supervisor on the radio. He tried to call a couple of supervisors and was told "it will be one minute." Donald Coty, the Mechanic Supervisor, walked by and I asked him to call Melvin Hutchins. By the time Hutchins arrived, Williams had quit yelling and cursing at me, but was still throwing pallets around and glaring at me. Hutchins asked me what the problem was, and I told him that I knew it was not a good time for this because the audit was going on, but this was the last time Williams was going to lose his temper and "go off on me" by cursing and yelling at me and calling me a "God damn mother-fucker" for no apparent reason. Hutchins called Chris Jordan, Packaging Supervisor, and he came over to my line. Jordan inventoried my tool bag and then told me to come to his office that afternoon and write out a statement of what happened. I began crying as I told him about Frank's discriminatory treatment and that I was tired of having to deal with Williams. Jordan assured me the situation would be resolved. Hutchins and Jordan then left to go back to the audit. From the time they left until three o'clock when I went to the front office, Williams stood at my re-work table and glared at me. I was extremely uncomfortable. At three o'clock, I went to Jordan's office and wrote out a statement. I was still very upset and told Jordan that I didn't know what Williams' problem was and he said he didn't care what Williams' problem was and that he would turn in my statement in the morning. I also told Jordan that Williams went and asked Catherine Long, a nearby co-worker, if she thought he had yelled at me, and Ms. Long told him twice that she thought he had yelled at me.

On or about June 15, 2006, I returned to work and tried to do my job while avoiding Williams. My co-workers were called in to the office to provide statements regarding the incident. Williams returned to my re-work table and glared at me the same way he had the day before. He would also walk up close to my machine and stop and stare at me. Williams' demeanor was very intimidating and because I knew that he had a history of violence against women, I was afraid he was going to hurt me. I was so scared of Williams that I took a screwdriver out of my tool bag and began carrying it around in my back pocket. When he was not standing at my re-work table or next to my machine, he would go to the filler machine and talk to Stephanie. He would turn around and glare at me from time to time during his conversation. Melvin Hutchins walked by and I told him that I was not comfortable working with Williams and that I did not feel safe around Williams. Hutchins told me that he had read my statement and agreed that he would not feel safe either. He reassured me that the situation would be resolved. He told me not to let it get me down and to "pray on it". Later that day, I was moved to the Line 5 label machine; however, this was still in the same department with Williams and only a few feet away. This move afforded me no protection from Williams.

On June 16, 2006, I reported back to work and heard over the radio that Williams was not going to be at work that day. I called Jordan and asked if I was going to be moved back to my regular line, Line 3, since Williams was not going to be there. He said "no". I saw Hutchins later that morning and asked him if the move to Line 5 was permanent. He told me that he needed me on Line 5 right then and could not answer if the move was permanent. I then asked Ricky Smothers, the Supervisor over all Supervisors, if the move was permanent and he told me I would have to talk to Tommy (LNU) in PR. I asked Ricky if he was aware of what happened to me the day before. He said that he had heard bits and pieces of what happened. I asked him if he had read my statement and he said "no". I realized at that point that Williams was not going to be disciplined for his discriminatory behavior and that I was not going to be protected from him. I was so

Page 4 EEOC Charge

Name:

Linda Thornton

Social Security #:

078-62-7979

Date:

09-15-06

upset that I had to clock out and go outside to calm down. Hutchins and Ricky followed me outside and told me to leave the property and come back in an hour to meet Tommy. I told them that I was too upset to drive so they told me I should wait in the car for Tommy to get there so I could talk to him. They did not want the other employees to see me crying and upset. I waited and spoke with Tommy and Marianne Boyer, CEO, about the situation with Williams. Despite my statement and statements from witness, they concluded that I had "baited" Williams. I tried to explain to them again that I did not feel safe working with Williams and that I had started carrying a screwdriver in my back pocket. Recognizing that they were not going to resolve the situation with Frank, I placed my badge on Tommy's desk. Boyer asked me not to quit and to think about it over the weekend. I repeatedly told Boyer that I did not feel safe working with Williams to which she responded several times that if this was a court of law the action they had taken would be acceptable. She accused me of having an issue with sexual discrimination, and even though she told me that the law required them to provide a safe work environment, she told me that Williams would not be terminated. She said I would be moved to Line 5 and Williams would be on Line 3 and that we would stay that way for three months to see which of us had a conflict first. There was no mention of a write up during this conversation. However, it was later stated that if I had returned to work following this incident, I would have been written up although I had done nothing wrong.

The next three scheduled work days I called in sick because I was too afraid to go in and face Williams. A female employee told me that the first two days I was out, Williams asked her where I was. On the third day, Flavor House called back and left a message that I would have to have a doctor's excuse to return to work. I called Leah Allums in Personnel Resources and told her that I would not be returning because I did not feel I would be safe working with Williams. I learned that after my employment ended, Williams was written up for cursing at another female employee.

I believe that I suffered from sexual discrimination, harassment, and retaliation while employed with Flavor House Products, Inc., and that I was discriminated against because of my sex, female. I have been discriminated against because of my sex in job assignments, training, promotions, wages, discipline, discharge, and other terms, conditions, and privileges of employment; and retaliated against in that the conduct was wilful, malicious, and in wanton disregard of my federally protected rights.

Linda Thornton
Charging Party

09-15-06

Date

PLAINTIFF'S
EXHIBIT
4

DOCUMENTATION FORM

Employee Name: Linda ThorntonInvestigating Supervisor: Chris JordanDate: 6-14-08Present: Melvin Hutchins, Frank HallWho was involved: Frank WilliamsWitness (s): Catherino Long, Wesley, Tamekin Cook

Date of incident: _____

Where did it take place: line 3When did it take place (time and day): 11⁰⁰ - 11⁰⁵?

What happened: Today on line 3 when I came back from second break, (Frank Williams had relieved me.) I noted that the paperwork had not been done while I was on break, so I was catching up on the paperwork. Frank was re-loading the machine with labels. There was re-work in a box full of cans, and the table was over-flowing with cans with bad labels. When Frank reloaded the machine he went to walk away - I asked him to help with the re-work - (the audit was going on) he started yelling at me that he had better "mother fucking things to do than worry about that fucking re-work. He continued to holler at me, and I told him to quit yelling & cussing at me. At this time he went from inside of the line to the outside of the line. The entire time yelling at me, continued to yell mother fucker, God damn mother fucker. Throwing a large bag of cans, as he continued to yell and cuss at me - I continued to request that Wesley would please call for a supervisor. At this time Frank

Did this result in down time? no If yes how much?Did this result in product being scrapped? If yes how much? no

Attach an additional sheet if needed for witness statements following the same format.

was still yelling & cussing and I continued to ignore him. Donald Coty walked by and I requested that he please get a supervisor, please call Melvin Hutchins.

MHP →

Finally Frank went on his way, when Melvin came I told him about the situation at hand.

Catherine ~~long~~ ~~there~~ was standing there and Wesley, and I honestly do not know who else. I ignored Frank Williams yelling God Damn mother fucker — whether he was calling me that name or just yelling it at me. Regardless — I won't take it again. No one else talks to me that way and he sure won't again. I don't have to tolerate that level of abusive language or name calling. Tameka asked me later what was he having a fit about.

Also, stated to Catherine "Did I holler at Linda". She stated "Yeah".

PLAINTIFF'S
EXHIBIT

DOCUMENTATION FORM

5

Employee Name: Catherine Long

Investigating Supervisor: Chris Jordan Date: 6-15-06

Present: _____

Who was involved: Frank Williams and Linda Thornton

Witness (s): _____

Date of incident: 6-14-06

Where did it take place: Line 3 Label Machine

When did it take place (time and day): Before 1200 Noon

What happened: Well Linda just had
Came from Brak's and she
asked Frank to help her clean
off the table by Line 3 label
machine. I hear Frank said
the F word and I can't
do every damn thing.
that all I heard except he
was doing a lot of yelling and
ext. ext. ext.

Did this result in down time? _____ If yes how much?

Did this result in product being scrapped? If yes how much?

Attach an additional sheet if needed for witness statements following the same format.

CONFIDENTIAL

FH000806

**PLAINTIFF'S
EXHIBIT**
DOCUMENTATION FORM

6

Employee Name: Tamela CookeInvestigating Supervisor: Chris Date: 6-15-06

Present: _____

Who was involved: Frank Williams + Linda Thornton

Witness (s): _____

Date of incident: 6-14-06Where did it take place: Line 3 label machineWhen did it take place (time and day): Before lunch

What happened: line 3 label machine messed up & we had
bad labels on the work area & we cleaned some
& when Linda got back from back some was
left up there and she asked ^{Frank} what about this
mess and Frank walked off saying curse words
exact I don't know so Linda said something to
him. ~~He~~ ~~at 2:30~~ ~~was~~ ~~he~~ ~~threw~~ his hands
up & said fuck it and went threw the curtains.
She was ignoring him but it was words still
being said from him.

Did this result in down time? _____ If yes how much?

Did this result in product being scrapped? If yes how much?

Attach an additional sheet if needed for witness statements following the same format.

CONFIDENTIAL

FH000808

FREEDOM COURT REPORTING

PLAINTIFF'S
EXHIBIT

7

AUDIOTAPE TRANSCRIPTION

IN RE:

LINDA THORNTON VS. FLAVOR HOUSE PRODUCTS
and FRANKLIN D. WILLIAMS, JR.

CASE NO.: 1:07-CV-712-WKW

COPY

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367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

FREEDOM COURT REPORTING

2

1 UNIDENTIFIED SPEAKER: Law
2 office?

3 MS. COOK: May I speak to Linda
4 Parrish?

5 UNIDENTIFIED SPEAKER: Hold on
6 just a moment.

7 MS. PARRISH: Hello?

8 MS. COOK: This is the State of
9 Alabama Unemployment Office.

10 MS. PARRISH: Yes, ma'am.

11 MS. COOK: I'm calling regarding
12 the appeals hearing for Linda Parrish.

13 MS. PARRISH: Yes.

14 MS. COOK: Okay. Is this Linda?

15 MS. PARRISH: Yes, it is.

16 MS. COOK: Okay. Hold on one
17 second. The employer representative, I
18 need to give them a call. I think
19 there's more than one person.

20 MS. PARRISH: Okay.

21 MS. COOK: Just a second. Let
22 me get that party.

23 MR. TAYLOR: Good morning, this

FREEDOM COURT REPORTING

3

1 is Tracy Taylor. Can I help you?

2 MS. COOK: Yes, Mr. Taylor, this
3 is Ann Cook, State of Alabama
4 Unemployment Office. I'm --

5 MR. TAYLOR: How are you today?

6 MS. COOK: Fine, thank you. I'm
7 calling regarding Linda A. Parrish.
8 She's on the other line, and I need to
9 call Tommy Mance and Frank Williams.

10 MR. TAYLOR: Yes, ma'am.

11 MS. COOK: Okay. Hold on a
12 second. Let me get the other parties on
13 the phone.

14 MR. TAYLOR: Thank you, ma'am.

15 RECORDING: Thank you for
16 calling Nutcracker Brands, formerly
17 Flavor House Products. If you know your
18 party's extension, you may dial it at
19 any time. For consumer affairs, press
20 four or hang up and dial 1-866-770-1157.
21 For sales and marketing, press five.
22 For all other options, press six.

23 To dial your party by last name,

FREEDOM COURT REPORTING

4

1 press one. For shipping and receiving,
2 press two. For purchasing, press three.
3 For accounting, press four. For human
4 resources, press five. For parts
5 delivery, press six. For the operator,
6 press zero. Please wait.

7 Thank you for calling Nutcracker
8 Brands, formerly Flavor House Products.
9 If you know your party's extension, you
10 may dial it at any time. For consumer
11 affairs, press four or hang up and dial
12 1-866-770-1197. For sales and
13 marketing, press five. For all other
14 options, press six. Transferring to an
15 operator; please wait.

16 UNIDENTIFIED SPEAKER:
17 Nutcracker Brands. May I help you?
18 MS. COOK: Yes. This is the
19 State of Alabama Unemployment Office.
20 I'm trying to get exten- --

21 UNIDENTIFIED SPEAKER: Yes,
22 ma'am.

23 MS. COOK: -- extension 222.

FREEDOM COURT REPORTING

5

1 UNIDENTIFIED SPEAKER: Okay,
2 that's Tommy Mance. His door is -- it
3 hasn't been open yet this morning. I am
4 thinking he's either with someone in
5 there or -- or not in yet.

6 MS. COOK: Well, he's expecting
7 a phone call from the State of --

8 UNIDENTIFIED SPEAKER: Do you
9 have an appointment with him or --

10 MS. COOK: He's expecting --
11 yes, ma'am. He's expecting a phone call
12 from the State of Alabama Unemployment
13 Office.

14 UNIDENTIFIED SPEAKER: Okay.
15 Let me walk down there and see -- and
16 see if he's coming in. I'm going to
17 stick you on hold for a minute, okay?

18 MS. COOK: All right.

19 UNIDENTIFIED SPEAKER: Ma'am?

20 MS. COOK: Yes?

21 UNIDENTIFIED SPEAKER: Okay.
22 Hold on just one second. I'm going to
23 transfer you over to him, okay? We have

FREEDOM COURT REPORTING

6

1 a terrible connection, though; I can
2 barely hear you. I hope it's better
3 when he picks up. Hold on.

4 MR. MANCE: Tommy Mance.

5 MS. COOK: Mr. -- this is the
6 State of Alabama Unemployment Office.
7 I'm calling regarding the appeals
8 hearing for Linda Parrish. I have Ms.
9 Parrish on the other line along with --
10 who is that? Tracy Taylor.

11 MR. MANCE: Okay. I have Frank
12 Williams here with me as a witness.

13 MS. COOK: Okay. Okay. Ms.
14 Linda Parrish, are you there?

15 MS. PARRISH: Yes.

16 MS. COOK: Okay. Do you have
17 someone else with you?

18 MS. PARRISH: Yes.

19 MS. COOK: Who is it?

20 MS. PARRISH: My attorney.

21 MS. COOK: Would you mind giving
22 me the name?

23 MS. CROOK: I don't represent

FREEDOM COURT REPORTING

7

1 you.

2 MS. PARRISH: She's not
3 representing me in this right here.
4 Bobby Crook.

5 MS. COOK: Are you tape
6 recording the hearing? It's not allowed
7 if you are. And no other tape is legal
8 except the State of Alabama. So if
9 you're tape recording, you cannot do
10 that.

11 MS. PARRISH: We're not tape
12 recording.

13 MS. COOK: Okay. Well, I have
14 on the other line Tracy Taylor, Tommy
15 Mance, and Frank Williams, a witness.

16 Let me explain this procedure.
17 The hearing is tape recorded. The State
18 of Alabama, it requires that all
19 unemployment hearings are tape recorded,
20 and we're on the record now for appeals
21 case number 088858206. This hearing is
22 being conducted by teleconference.
23 Today's date is August 23rd, 2006. My

FREEDOM COURT REPORTING

8

1 name is Ann Cook. I'm an administrative
2 hearing officer for the State of Alabama
3 Department of Industrial Relations,
4 Hearings and Appeals Division, and I
5 will be making the decision in this
6 unemployment case. The claimant is
7 present, Linda Parrish. The employee is
8 Flavor House Products, Incorporated,
9 represented by Tracy Taylor, Tommy
10 Mance, and the witness Frank Williams.

11 Ms. -- Ms. Parrish unemploy- --
12 her unemployment claim was filed through
13 the Alabama counsel the week of June
14 25th, 2006. This claim has been
15 approved for payment of unemployment
16 benefits and the State of Alabama was
17 notified, Flavor House of this eligible
18 determination and advised them if they
19 disagree they have the right to appeal.
20 They must file their appeal within 15
21 calendar days of the date the notice was
22 sent to them. The note was mailed to
23 Flavor House Products, Incorporated on

FREEDOM COURT REPORTING

9

1 July 19th, '06. They did file a timely
2 appeal. Under Alabama law, section
3 254782, which is the issue regarding
4 voluntary quit, the law states that if
5 you voluntarily leave your last bona
6 fide work without a good work-connected
7 cause, the unemployment claim is denied
8 indefinitely. Good work-connected cause
9 means it stands to reason, just grounds
10 for such action, adequate excuse that
11 would bear the test of reason and
12 knowledge, element of good faith, and to
13 be good cause the reason for leaving has
14 to be job connected. The law requires
15 that if you voluntarily leave you must
16 -- you're denied benefits until you
17 return to other insured or acceptable
18 work and earn ten times the weekly
19 unemployment rate established on this
20 claim.

21 This is the procedure we will
22 follow, Ms. Parrish: I'll let you give
23 your statement first. I'm going to ask

FREEDOM COURT REPORTING

10

1 you some questions, after which the
2 employer representative, Mr. Taylor, and
3 Mr. Mance will be allowed to ask you
4 some questions. After that, I'll take
5 your testimony.

6 Mr. Taylor, are you a
7 representative, or are you giving
8 testimony?

9 MR. TAYLOR: Ma'am, I'm acting
10 only as a representative.

11 MS. COOK: Okay. Mr. Mance,
12 I'll take your testimony, and Ms.
13 Parrish will be allowed to ask you some
14 questions, and then we will allow Mr.
15 Taylor to ask Mr. Mance some questions
16 also before Ms. Parrish then. And, Mr.
17 Williams, we'll take your testimony, and
18 Mr. Mance and Mr. Taylor will be allowed
19 to ask you some questions as well as Ms.
20 Parrish. After that, if there -- if
21 there is any other information that you
22 need to present to me to be considered
23 that is relevant, you will be allowed to

FREEDOM COURT REPORTING

11

1 present that.

2 Are there any questions about
3 this process? Okay. Well, you must be
4 under oath before I take your testimony.
5 I'll --

6 MS. PARRISH: Yes, ma'am.

7 MS. COOK: -- administer that to
8 you now. Do you solemnly --

9 MS. PARRISH: Will you tell me
10 if there is a lawyer present for them?

11 MS. COOK: I told you there
12 were. Tracy Taylor is a rep.

13 Mr. Taylor, you work with Talk
14 UC Express; is that correct?

15 MR. TAYLOR: Yes, ma'am. I'm a
16 lay representative employed by Talk UC
17 Express.

18 MS. COOK: Okay.

19 MR. TAYLOR: That's related to
20 and handles unemployment patterns.

21 MS. COOK: Okay. I understand.
22 Well, no, there is no attorney as far as
23 I know, Ms. Parrish. He's a

FREEDOM COURT REPORTING

12

1 representative with the employer
2 representative company, and the name of
3 the company, Talk UC Express. And the
4 other two individuals are Mr. Williams
5 is the witness and, Mr. Mance, what's
6 your title?

7 MR. MANCE: I'm the human
8 resources manager.

9 MS. COOK: Okay. Okay. You
10 must be under oath before I -- well, is
11 there another question?

12 MS. PARRISH: No, ma'am.

13 MS. COOK: Okay. You must be
14 under oath before I take your testimony.
15 Do you solemnly swear to tell the truth,
16 the whole truth, nothing but the truth,
17 so help you God, Ms. Parrish?

18 MS. PARRISH: I do.

19 MS. COOK: And Mr. Mance?

20 MR. MANCE: I do.

21 MS. COOK: And Ms. Will- -- Mr.
22 Williams?

23 MR. WILLIAMS: I do.

FREEDOM COURT REPORTING

13

1 MS. COOK: Okay.

2

3 EXAMINATION OF MS. PARRISH BY MS. COOK:

4 Q. Ms. Parrish, are you working
5 now?

6 A. No, ma'am.

7 Q. Okay. When you worked for
8 Flavor House Products, Incorporated,
9 where -- where did you work? What
10 location?

11 A. On the label machine.

12 Q. I -- where did you work? What
13 location did you work? Where?

14 A. It's in Alabama.

15 Q. Where did you work, Ms. Parrish?
16 What city did you work?

17 A. Dothan, Alabama.

18 Q. Okay. All right. Your job
19 title, what was that?

20 A. Label operator.

21 Q. I'm sorry; you said label
22 operator?

23 A. Yes, ma'am.

FREEDOM COURT REPORTING

14

1 Q. That's L-A-B-E-L?

2 A. Yes, ma'am.

3 Q. Okay. And how long did you work
4 for this company?

5 A. Five years.

6 Q. Could you give me your hire
7 date?

8 A. June, 2001.

9 Q. And what was your last day at
10 work?

11 A. June 16th, 2006.

12 Q. Okay. Were you discharged from
13 this job?

14 A. Yes, ma'am.

15 Q. Okay. Who terminated you, Ms.
16 Parrish?

17 A. Maryann Boyer.

18 Q. I'm sorry; I can't hardly
19 understand you.

20 A. Maryann Boyer.

21 Q. And what was her title? What is
22 her title?

23 A. CEO.

FREEDOM COURT REPORTING

15

1 Q. And why did she terminate you?

2 A. I had no other choice but to be
3 discharged.

4 Q. Then what -- tell me what did
5 she tell you when she told you were dis-
6 -- you were fired? What reason did she
7 give?

8 A. There was no action taken
9 against Frank Williams; he would
10 continue to work there.

11 Q. Okay. No, ma'am. I asked you
12 what reason did she give you? You said
13 -- you said you were fired by the CEO,
14 and what reason did she give you for
15 terminating you?

16 A. I felt like I was forced to
17 leave --

18 Q. No, you said you were
19 terminated, and I need you to tell me
20 what did she say when she told you you
21 were fired? What reason did she say?

22 A. I said I was constructively
23 terminated, which meant I felt unsafe to

FREEDOM COURT REPORTING

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1 work there. I had no other choice but
2 to leave.

3 Q. Okay. Well, you first -- I
4 first understood you to say you were
5 fired by -- I don't recall the lady's
6 name but you said the CEO. So you're
7 saying now that you were constructively
8 terminated?

9 A. Yes, ma'am.

10 Q. Okay. What does that mean?
11 What do you mean by that?

12 A. I felt unsafe to work with a
13 registered sex offender that had already
14 threatened me.

15 Q. Okay. What did -- who is -- who
16 are you speaking of, Ms. Parrish?

17 A. Frank Williams.

18 Q. Okay. How did he threaten you?

19 A. He cussed me out, he physically
20 thrown things at me.

21 Q. When did that happen?

22 A. On June 14th.

23 Q. Okay. What -- you say Mr.

FREEDOM COURT REPORTING

17

1 Williams cursed you out and he threw
2 something at you. What did he throw at
3 you?

4 A. He threw pallets and a large
5 garage bag full of cans.

6 Q. Did he throw it at you or in
7 your direction?

8 A. In my direction.

9 Q. Okay. So what did he say to you
10 when he threw it in your direction?

11 A. He called me a God damn
12 motherfucker.

13 Q. Were you and him having a
14 disagreement?

15 A. I asked him to help with rework,
16 and he proceeded to call me a God damn
17 motherfucker.

18 Q. Okay. Who was your supervisor?

19 A. Chris Jordan.

20 Q. And did you report this to your
21 supervisor?

22 A. Yes, ma'am.

23 Q. When did you report it?

FREEDOM COURT REPORTING

18

1 A. Immediately. As -- I tried for
2 10 to 15 minutes to get a hold of a
3 supervisor through a mechanic radio.

4 Q. Okay. Did you have -- this was
5 the first time you had a disagreement
6 with Mr. Williams?

7 A. No, ma'am.

8 Q. Okay. Had you made a formal
9 complaint or report that you were having
10 difficulty working with him?

11 A. Yes, ma'am.

12 Q. Well, what authority, if any,
13 did Mr. Williams have over you?

14 A. He was my team leader.

15 Q. Okay. And where did you get the
16 information that he was a registered sex
17 offender?

18 A. He freely spoke about it.

19 Q. I mean, do you have firsthand
20 knowledge that that is correct?

21 A. Yes, ma'am.

22 Q. Okay. Where did you get it
23 from?

FREEDOM COURT REPORTING

19

1 A. Off of the public safety
2 information center of Alabama.

3 Q. Okay. So how did that affect
4 you in working with him?

5 A. He was sexually harassing me.

6 Q. Okay. How did he do that?

7 A. He continuously cussed me; he
8 continuously talked about his past.

9 Q. And who did you say you reported
10 all of this to?

11 A. I reported it to Chris Jordan,
12 Melvin Hutchins. I wrote out statements
13 and turned in to the PR department.

14 Q. And what -- when did you do
15 that, Ms. Parrish?

16 A. When the incident happened and
17 before the incident happened, probably a
18 month before.

19 Q. I mean, what did you report
20 before the incident happened?

21 A. That he was harassing me.

22 Q. Well, that is the incident, is
23 it not?

FREEDOM COURT REPORTING

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1 A. This is a continuous incident.

2 Q. Well, did you get a response
3 from your employer about your complaint?

4 A. No. The first -- the first time
5 they said we would just have to work
6 together.

7 Q. What was your first complaint?

8 A. When I was called in there I was
9 reprimanded -- reprimanded for saying
10 that he was a convicted sex offender.

11 Q. Okay. Did you have a
12 documentation of that complaint or that
13 allegation?

14 A. No, ma'am. They said they
15 pulled it up.

16 Q. Well, did you have any
17 documentation to substantiate your
18 allegations against Mr. Williams?

19 A. Yes, ma'am.

20 Q. And what -- where did you get
21 your information from?

22 A. From the computer.

23 Q. Okay. So you have a copy of it?

FREEDOM COURT REPORTING

21

1 A. Yes, ma'am.

2 Q. Okay. So what did that have to
3 do with him working with you?

4 A. He continuously put down
5 females.

6 Q. But how did that keep you from
7 being able to work with him?

8 A. Because I -- I was called a God
9 damn motherfucker every day.

10 Q. Well, did he call you that, or
11 did he use that terminology?

12 A. He called me that.

13 Q. He did that to your face
14 directly; is that correct?

15 A. Yes, ma'am.

16 Q. And what reason did he call you
17 a name?

18 A. Because I was a female.

19 Q. So he would come directly to
20 your face and use the derogatory term to
21 you?

22 A. Yes, ma'am.

23 Q. Okay. Does your company have a

FREEDOM COURT REPORTING

22

1 policy against harassment and behavior
2 of that nature? Ms. Parrish?

3 A. Ma'am?

4 Q. Does your company have a written
5 policy against workplace violence and
6 harassment?

7 A. Yes, ma'am.

8 Q. Okay. Did you follow the
9 procedure in filing the complaint per
10 your handbook?

11 A. I was told to report it, and
12 that's what I did.

13 Q. I said, did you follow the
14 procedure in the handbook?

15 A. I don't have a written procedure
16 in a handbook.

17 Q. Did you not get a copy of an
18 employee handbook?

19 A. Yes, ma'am.

20 Q. What happened to your copy?

21 A. I have my copy.

22 Q. Okay. I asked you, did you
23 follow the procedure from your handbook?

FREEDOM COURT REPORTING

23

1 A. Yes, ma'am, and that was to
2 report it to my supervisor.

3 Q. Okay. So did you make a written
4 report that you had been sexually
5 harassed by Mr. Williams?

6 A. Yes, ma'am.

7 Q. Do you have a copy of that
8 complaint?

9 A. Ma'am? Hello?

10 Q. Do you have a copy of that
11 complaint, Ms. Parrish?

12 A. No, ma'am.

13 Q. Okay. Do you have a copy of any
14 of your complaints to the employer?

15 A. Yes, ma'am.

16 Q. Okay. What's the date on the
17 one you have?

18 A. I don't have it with me.

19 Q. Okay. What --

20 A. I wrote it and gave it to them
21 on June 14th.

22 Q. Okay. That was the only
23 complaint you have?

FREEDOM COURT REPORTING

24

1 A. No, ma'am.

2 Q. I mean a written complaint. Is
3 that the only one you made?

4 A. No, ma'am.

5 Q. Okay. Do you have copies of any
6 of them?

7 A. Not with me.

8 Q. Okay. What happened when you
9 made your complaint to Flavor House?
10 What happened with the complaint?

11 A. Well, our handbook, number one,
12 does not say that we have to have a
13 written complaint.

14 Q. What I'm asking you, what
15 happened when you made your complaint?
16 You told me you made written complaints,
17 so did you make verbal complaints also?

18 A. Yes, ma'am.

19 Q. Okay. What happened with your
20 verbal and written complaints? What
21 action was taken by the employer?

22 A. None.

23 Q. There was --

FREEDOM COURT REPORTING

25

1 A. I was moved.

2 Q. Okay. They moved you to another
3 area?

4 A. Twenty feet away.

5 Q. Okay. Did you have to work with
6 Mr. Williams then?

7 A. Yes, ma'am.

8 Q. They moved you but you still
9 worked with him; is that what you're
10 saying?

11 A. Yes, ma'am.

12 Q. Okay. You say he was a lead
13 person working with you?

14 A. Yes, ma'am.

15 Q. Okay. Did you -- was there
16 anywhere else that you -- they could
17 move you to?

18 A. No, ma'am. I run -- yes, there
19 was. I run label machines, and he was
20 the relief person for them label
21 operators when they go on break.

22 Q. When you reported the
23 threatening behavior, alleged

FREEDOM COURT REPORTING

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1 threatening behavior you felt from Mr.
2 Williams, did your employer tell you
3 they had taken some type of action in
4 regard to your complaint?

5 A. No, ma'am.

6 Q. What did they tell you? How did
7 they resolve this problem?

8 A. That I would have to get over
9 it.

10 Q. Okay. So Mr. Williams used
11 profanity in your presence, and you felt
12 that he disliked women; is that correct?

13 A. Yes, ma'am. And throwing
14 things.

15 Q. Okay. What happened when you
16 felt you could no longer --

17 A. Ma'am?

18 Q. When you felt you could no
19 longer work with Mr. Williams, what did
20 you do?

21 A. Left.

22 Q. Did you give a formal notice of
23 resignation?

FREEDOM COURT REPORTING

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1 A. I asked them to remove him when
2 he continued working there and they told
3 me yes.

4 Q. I said, did you give a notice of
5 resignation?

6 A. I'm able and willing to come
7 back to work when he leaves.

8 Q. Did you give a notice of
9 resignation?

10 A. I told them I could no longer
11 work there as long as he works there.

12 Q. Did you give a two-week notice?

13 A. No, ma'am.

14 Q. Okay. So you -- who did you --

15 A. I was not allowed that
16 opportunity.

17 Q. Okay. How did they stop you
18 from giving a two-week notice?

19 A. They continued to keep Frank
20 Williams there. It was to the point
21 where I had a screwdriver in my back
22 pocket.

23 Q. Okay. Did you file any charges

FREEDOM COURT REPORTING

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1 with him with the police department?

2 A. No, ma'am. I wish I would have
3 but at that -- that -- you're -- we
4 cannot get out on the phones that are at
5 the plant.

6 Q. Well, when you got off work,
7 could you have filed charges then?

8 A. No, ma'am. I was so upset, I
9 wasn't thinking.

10 Q. Okay. So you voluntarily quit
11 on June 16th; is that the day you
12 terminated your employment?

13 A. I did not voluntarily quit; I
14 was forced to quit.

15 Q. Okay. You were -- you felt
16 forced to quit on 6/16/06; is that
17 correct?

18 A. Yes, ma'am.

19 Q. Okay. If one of you has a cell
20 phone, would you mind turning it off so
21 it won't interrupt the hearing?

22 A. Yes, ma'am, we have that.

23 Q. Okay. And you say you felt

FREEDOM COURT REPORTING

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1 forced to quit on June 16, '06, because
2 Mr. Frank Williams who was your lead
3 person, you had to continue to work with
4 him and he made derogatory remarks
5 toward you and he threw things in your
6 direction; is that correct?

7 A. Yes, ma'am.

8 Q. And, also, did you say the
9 employer, after you reported this to the
10 employer, you felt that they did not
11 resolve the problem and you could not
12 continue to work with him; is that
13 correct?

14 A. Yes, ma'am.

15 Q. Were you the only person working
16 with Mr. Williams?

17 A. No, ma'am.

18 Q. Were you the only female working
19 with him?

20 A. No, ma'am, but I understand that
21 he's had more write-ups after me.

22 Q. I said, were you the only female
23 that worked with him?

FREEDOM COURT REPORTING

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1 A. No, ma'am.

2 Q. Did anyone else -- did you --
3 did they experience, as far as you know,
4 the same problem at that time?

5 A. Yes, ma'am, and since I've been
6 gone also.

7 Q. Okay. How do you know what
8 happened after you left the business?

9 A. I worked with -- at Flavor House
10 for five years.

11 Q. I said, how would you know what
12 happened after you left the business?

13 A. I have friends at Flavor House.

14 Q. Well, this is your firsthand
15 direct knowledge; not -- not what, you
16 know, someone told you. I was asking
17 for your knowledge of what happened.

18 A. Okay.

19 Q. Okay. So your -- you volun- --
20 you say you were constructively
21 terminated because you felt you worked
22 in an unsafe work environment because of
23 Mr. Frank Williams, and on June 14th you

FREEDOM COURT REPORTING

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1 made a formal complaint on him and you
2 felt that this complaint was not
3 resolved to your satisfaction and you
4 could not work with him because of
5 information you received about his past
6 and you felt threatened because he used
7 profanity and threw things. So on June
8 16th, '06, you felt forced to leave your
9 job; is that correct?

10 A. Yes, ma'am, and he continuously
11 talked about his conviction as being a
12 sex offender.

13 Q. Was he speaking to you, Ms.
14 Parrish?

15 A. Yes, ma'am.

16 Q. Were you involved in a
17 conversation with him?

18 A. Yes, ma'am -- no. He spoke of
19 his conviction freely out loud in the
20 break room to me, to anyone.

21 Q. Okay. So could you not get up
22 and leave that conversation?

23 A. Not if I'm at my machine I

FREEDOM COURT REPORTING

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1 cannot leave.

2 Q. Okay. Anything else, Ms.
3 Parrish, you want to add to the reason
4 you felt constructively terminated?

5 A. Yes, ma'am. I would not have
6 quit my job if I did not feel unsafe. I
7 have stayed there for five years. I've
8 tolerated discrimination throughout
9 those five years, including being hit in
10 the chest with a jar of peanuts.

11 Q. Okay. Ms. -- Ms. Parrish, we're
12 asking about your termination, your
13 separation. So did all that happen when
14 you were separated? Were you hit with
15 peanuts, a jar of peanuts?

16 A. No, ma'am, it led up to it, the
17 discrimination.

18 Q. Okay. Did you file an EEOC
19 discrimination charge?

20 A. I'm going to.

21 Q. Okay. But as far as this final
22 incident that led to your separation
23 from the company, it involved working

FREEDOM COURT REPORTING

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1 with Mr. Frank Williams and you felt you
2 were in an unsafe work environment and
3 could not continue; is that correct?

4 A. Yes, ma'am, and I would also
5 like to note that the position that
6 Frank Williams is in, he freely walks
7 around the plant; so, therefore, moving
8 me anywhere did not accomplish anything.

9 Q. Okay. So you wanted them to
10 terminate him or to --

11 A. Yes, ma'am.

12 Q. You wanted the company to
13 terminate Mr. Williams?

14 A. Yes, ma'am. He -- he freely
15 walks around the plant.

16 Q. Was that not part of his job?

17 A. No, ma'am, unless he's relieving
18 for break.

19 Q. Okay. Okay. Ms. Parrish,
20 anything else?

21 A. No, ma'am.

22 MS. COOK: Okay. Mr. Taylor, do
23 you have any questions for Ms. Parrish?

FREEDOM COURT REPORTING

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1 MR. TAYLOR: Yes, ma'am, I do.
2 Thank you.
3

4 EXAMINATION OF MS. PARRISH BY
5 MR. TAYLOR:

6 Q. Ms. Parrish, you've testified
7 that you were discriminated against.
8 How were you discriminated against?

9 A. I was talked down to. I was
10 called names. In one incident I was
11 even told this is a man's job. And the
12 CEO had told me that just to put up with
13 it; that she also has to deal with it in
14 meetings that she has.

15 MS. COOK: Okay. Any other
16 questions, Mr. Taylor?

17 MR. TAYLOR: Yes, ma'am.

18 Q. (BY MR. TAYLOR:) Mr. Parr -- or
19 Ms. Parrish, you testified that Mr.
20 Williams was harassing you because you
21 were a female. Mr. -- did Mr. Williams
22 tell you that?

23 A. Mr. Williams would not have

FREEDOM COURT REPORTING

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1 talked to a man that way.

2 Q. How do you know that?

3 A. Because I worked with him.

4 Q. So you base this testimony on
5 your assumption that he was harassing
6 you because you were a female?

7 A. Yes.

8 Q. You said he used profanity when
9 he spoke to you. Were you using
10 profanity in the workplace?

11 A. Yes.

12 Q. Why is your profanity acceptable
13 and his is not?

14 A. I have never called anybody a
15 God damn motherfucker.

16 Q. The choice of the words that he
17 used made it more egregious than your
18 use of profanity?

19 A. Oh, no. Maybe the choice of him
20 having a fit, throwing things, and his
21 uncontrollable actions.

22 Q. Well, ma'am, you testified that
23 he threw things. He threw them at you?

FREEDOM COURT REPORTING

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1 A. In my direction.

2 Q. So he was trying to hit you?

3 A. That would be a question for
4 him.

5 Q. Do you believe he was trying to
6 hit you?

7 A. Yes.

8 Q. So, ultimately, that's why you
9 felt threatened; because he was throwing
10 things, trying to hit you?

11 A. Yes. And prior to this
12 incident, he had told somebody that he
13 would get me back.

14 Q. How do you know that?

15 A. Because the person, he told me
16 that -- told that to told me. If you'll
17 look right there in my file --

18 Q. Well, ma'am, how do you know
19 that person was telling the truth?

20 A. See my complaint and talk with
21 that person.

22 Q. So you testified you fired --
23 filed a prior complaint, final

FREEDOM COURT REPORTING

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1 complaint, on June 14. When did you
2 file those complaints?

3 A. Which one?

4 Q. It talks about all the
5 complaints you filed. When did you file
6 your first complaint against --

7 MS. CROOK: That's irrelevant.
8 I'm going to enter an objection at this
9 point. This is all irrelevant. We
10 couldn't get into her past complaints.

11 MS. COOK: Okay. Ms. -- hold on
12 a second, Ms. -- I didn't get your last
13 name. What's your last name?

14 MS. CROOK: Crook.

15 MS. COOK: Bobby what?

16 MS. CROOK: Crook.

17 MS. COOK: I can't understand
18 you.

19 MS. CROOK: C-R-O-O-K.

20 MS. COOK: Okay. Did I not
21 understand you to say you were not
22 participating in the hearing, that you
23 were just going to listen?

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1 MS. CROOK: I'm here to protect
2 her interest in the case, so I am
3 representing her in this.

4 MS. COOK: Okay. But you told
5 me you were not participating. Now,
6 it's okay if you want to be a
7 representative in the hearing, but we
8 have to have your identity and know
9 whether you're participating. Are you
10 participating?

11 MS. CROOK: At this point I
12 guess I'm going to have to participate
13 if he's going to go into all of her past
14 complaints, which she wasn't allowed to
15 go into.

16 MS. COOK: Okay. But you cannot
17 be disruptive to the hearing, and if
18 you're going to participate be
19 nondisruptive and just -- you can --
20 this is an informal hearing, it's not in
21 court, so it's not the same. So --

22 MS. CROOK: I'm just --

23 MS. COOK: Go ahead, Mr. Taylor,

FREEDOM COURT REPORTING

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1 with your questions.

2 MR. TAYLOR: Thank you.

3 Q. (BY MR. TAYLOR:) Ma'am, when
4 did you file your first complaint?

5 A. I'm not answering that. I told
6 you I did not have my copies with me.

7 Q. Well, ma'am, let's step away
8 from it and go to that date. On or
9 about when did you file your first
10 complaint?

11 A. Two to three months prior.

12 Q. So about March?

13 A. This is on Frank. Then there
14 was one the year before.

15 MS. COOK: Okay.

16 A. So I don't --

17 MS. COOK: Okay. Mr. -- Mr.
18 Taylor, be more specific about these
19 questions you're asking her.

20 MR. TAYLOR: Yes, ma'am.

21 Q. (BY MR. TAYLOR:) You filed your
22 first complaint against Mr. Williams in
23 March of '06?

FREEDOM COURT REPORTING

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1 A. No.

2 Q. When did you file your first
3 complaint about Mr. Williams?

4 A. '05 --

5 Q. The month?

6 A. That was not my first complaint
7 on Frank. I filed the first of the year
8 before. I've got several.

9 Q. Ma'am, isn't it true that in the
10 end of '05, probably the last quarter,
11 you had been working on a line, you got
12 into an altercation with another
13 employee?

14 A. Who might that be?

15 Q. Have you been in an altercation
16 with another employee besides Mr.
17 Williams? I'm sorry; I didn't hear your
18 answer.

19 A. Are you talking about when a
20 mechanic hit me with a jar?

21 Q. Ma'am, I'm not giving you any
22 specifics. Have you had an altercation
23 with another employee?

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1 A. I can't give you --

2 MS. COOK: Okay. Mr. Taylor --
3 Mr. Taylor, that appears to be
4 immaterial that -- what you're asking at
5 this point. I don't understand why you
6 want to know that.

7 MR. TAYLOR: Yes, ma'am. I'll
8 move to my next question.

9 MS. COOK: Okay.

10 MR. TAYLOR: Thank you.

11 Q. (BY MR. TAYLOR:) Ms. Parrish,
12 is it true that at the end of '05 you
13 were moved to line three, the line
14 supervised by Mr. Williams as the team
15 lead?

16 A. Yes.

17 Q. That move to that line was a
18 result of an altercation with another
19 employee?

20 A. No.

21 Q. You were moved off the line that
22 Mr. Williams supervised as a result of
23 this final altercation; is that true?

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1 A. Under investigation.

2 Q. And isn't it true that the
3 employer addressed your concerns by
4 moving you from his supervision?

5 A. No.

6 Q. So he was supervising the line
7 you were now working on or going to be
8 working on?

9 A. He could, yes.

10 Q. There was a team lead assigned
11 to the line that you were going to be
12 working on?

13 A. Frank Williams is put where they
14 need him.

15 MS. COOK: Ms. Parrish, could
16 you -- did you understand his question?

17 MS. PARRISH: Yes, ma'am.

18 MS. COOK: Okay. Could you
19 respond to his question, please?

20 MS. PARRISH: Frank Williams
21 goes in that plant --

22 MS. COOK: That's not what he
23 asked you, Ms. Parrish. Would you

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1 restate your question?

2 MS. PARRISH: The team leader on
3 line three --

4 MS. COOK: Would you restate
5 your question, Mr. Taylor?

6 MR. TAYLOR: Thank you.

7 Q. (BY MR. TAYLOR:) And the line,
8 ma'am, that you were working on, is
9 there a team leader assigned to that
10 line?

11 A. No.

12 Q. So, in fact, Mr. Williams would
13 not be your supervisor on that line
14 because there is no team leader on that
15 line; is that correct?

16 A. Yes.

17 MR. TAYLOR: I don't have any
18 further questions. Thank you.

19 MS. COOK: So, Mr. Mance, do you
20 have any questions?

21 MR. MANCE: I have no questions.

22 MS. COOK: Okay. And, Ms.

23 Crook, since I did not know you were

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1 going to represent Ms. Parrish in this
2 hearing until a few minutes ago, I
3 didn't put you in the line to ask
4 questions because I was unaware. Do you
5 have any questions now?

6 MS. CROOK: No, ma'am.

7 MS. COOK: Pardon me?

8 MS. CROOK: No, ma'am.

9 MS. COOK: Okay. Mr. -- Mr.
10 Mance, do you have any -- well, let me
11 ask you a few questions, Mr. Mance.

12

13 EXAMINATION OF MR. MANCE BY MS. COOK:

14 Q. Ms. Parrish said that she worked
15 for Flavor House for five years; her
16 hire date was June of 2001. Can you
17 give me a specific date?

18 A. Yes, ma'am. June 25th, 2001.

19 Q. And her -- when she retired,
20 what was her job title?

21 A. She was hired in as a laborer
22 position. She had several changes while
23 employed.

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1 Q. Okay.

2 A. Most recent title was a label
3 operator.

4 Q. Okay. And what is the very last
5 day Ms. Parrish worked for your company?

6 A. That would have been 6/16; she
7 came in and turned out actually worked
8 that day. She came in that morning,
9 spoke with Maryann Boyer, our director
10 of operations, and spoke with myself.

11 Q. And spoke to you about what?

12 A. About her concerns with the
13 investigation and working on the line
14 with Frank Williams.

15 Q. Why is she no longer employed
16 with -- what -- does your company have
17 another name at this time?

18 A. Nutcracker Brands.

19 Q. Okay.

20 A. And then --

21 Q. Okay. Why was Ms. -- what is
22 the reason Ms. Linda Parrish no longer
23 works for your company?

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1 A. She voluntarily resigned on the
2 21st of June.

3 Q. Okay. You -- your statement is
4 that she came in on June 16th, which was
5 on a Friday, and she spoke to you and
6 who is the other person?

7 A. Maryann Boyer, our director of
8 operations.

9 Q. Okay. And what was the nature
10 of the conversation?

11 A. The investigation concerning
12 herself and Frank; the altercation they
13 had had on the 14th.

14 Q. Okay. Why did Ms. Parrish not
15 work on Friday, June 16th?

16 A. She felt she was too upset to
17 work. We offered her the opportunity to
18 go home and think about it over the
19 weekend. We expected her to be back at
20 work on Monday. She voluntarily left on
21 Friday but she could not work -- we gave
22 her the rest of that day off and
23 expected her back to work on Monday.

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1 Q. And what was Mr. -- what was Mr.
2 Williams's job title or position over
3 Ms. Parrish?

4 A. Mr. Frank Williams is our team
5 leader on line three.

6 Q. Okay. Had you received
7 complaints from Ms. Parrish about
8 working with Mr. Williams?

9 A. Not complaints. There has been
10 altercations previously mentioned, March
11 the --

12 Q. Are you -- what -- okay. You
13 say you had not received any complaints
14 from Ms. Parrish?

15 A. Not complaints about working
16 with him, no. There had been
17 altercations between the two individuals
18 previously.

19 Q. Okay. But her statement I
20 understood earlier was that she had
21 filed verbal complaints about him. So
22 are you --

23 A. No, ma'am.

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1 Q. You're not characterizing them
2 as formal complaints?

3 A. No, ma'am, it's not formal
4 complaints. It's documentation about
5 comments that were made between the two
6 of them or among the two among other
7 employees that were investigated. And
8 Ms. Parrish did receive a disciplinary
9 action concerning her involvement in the
10 comments on March -- February 16th.

11 Q. Okay.

12 A. And March 7th.

13 Q. So were they altercations or --
14 or verbal conflicts between --

15 A. Verbal conflicts, yes, ma'am.

16 Q. Okay. Between Ms. Parrish and
17 Mr. Williams there were verbal conflicts
18 and alter- -- verbal --

19 (Side A of tape ends.)

20 MS. COOK: Okay. We're back on
21 the record. We went off the record
22 momentarily; I ran out of tape. But do
23 you both agree that when I stopped and

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1 changed my tape, that no testimony took
2 place when I asked Mr. Mance to hold on
3 a second?

4 MR. MANCE: I agree.

5 Q. (BY MS. COOK:) Okay. Okay.
6 You said there was no formal complaints,
7 but there were allegations and verbal
8 conflicts with Ms. -- between Ms.
9 Parrish and Mr. Williams?

10 A. Yes, ma'am. She had made
11 comments, inflammatory nature, about his
12 past and about him in the work force.
13 After investigating that we come to the
14 conclusion that she had made the
15 comments of an inflammatory nature, and
16 she did receive a disciplinary action
17 for the comment.

18 Q. Okay. What did Ms. -- when you
19 investigated Ms. Parrish, what did she
20 say about those inflammatory comments
21 she made about Mr. Williams?

22 A. She was -- let's see. Let me
23 read her statement here. She said

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1 another employee had came to her telling
2 her the information about Frank. Again,
3 she did repeat that information to other
4 employees.

5 Q. Okay.

6 A. Information --

7 Q. Did she complain that he had
8 called her a derogatory name?

9 A. Not at this time, no. This is a
10 previous altercation.

11 Q. Okay. But in the final
12 investigation, did Ms. Parrish make a
13 formal complaint against Mr. Williams?

14 A. Let's see. She did make the
15 statement that he was cursing, yelling
16 at -- yelling at her, calling her MF --
17 GDMF. Those were her -- that is in her
18 statement.

19 Q. Okay. Did you get any other
20 employees to come -- who came forward
21 that witnessed come -- the -- Mr.
22 Williams making those derogatory
23 comments to Ms. Parrish?

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1 A. Yes, ma'am. We had other
2 employees involved in the investigation.

3 Q. Okay. Did they witness -- did
4 they hear him calling her names?

5 A. They heard yelling; they did not
6 hear specific cursing at her.

7 Q. Okay. So the witnesses said
8 they did hear yelling but did not say
9 specifically that Mr. Williams called
10 Ms. Parrish names?

11 A. Yes, ma'am, that's correct.

12 Q. Okay. Did any witnesses witness
13 Mr. Williams throwing things in Ms.
14 Parrish's direction?

15 A. No, ma'am.

16 Q. Did you move Ms. Parrish to
17 another area so she would not be under
18 his direct supervision?

19 A. Yes, ma'am.

20 Q. And where -- where did you move
21 her to?

22 A. Moved her to line five label
23 operator. She retained the same pay,

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1 same position, just in a different line
2 away from Mr. Williams so that there
3 would not be any future altercation.

4 Q. Now, when -- when did that move
5 take place?

6 A. The move would have taken place
7 on that Friday that was the termination
8 that we had given her; she felt she
9 could not work and decided to go home
10 that day on the 16th.

11 Q. So the move would have take --
12 took place on June 16th, but she did not
13 work?

14 A. Exactly.

15 Q. Okay.

16 A. She -- to my knowledge, she
17 actually worked in a different position
18 on the 15th after the altercation
19 happened on the 14th. So she was not
20 working with Frank on the 15th. The day
21 she did work, on the 16th when she came
22 in, she did not report to work on the
23 line; she stayed in the office

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1 discussing it with myself and Maryann
2 Boyer and left from there to go home.

3 Q. Did she -- did Ms. Parrish tell
4 you she was not returning the next
5 workday?

6 A. She attempted to turn her badge
7 in; we asked her to take the weekend to
8 think about it. We did not want her to
9 resign at that point. We wanted her to
10 have a chance to understand our
11 investigation process, what we had done.
12 We did not want her to resign on that
13 Friday. We'd offered her the
14 opportunity to think about it over the
15 weekend. She called in Monday stating
16 she was sick. She called in again on
17 Tuesday stating she was sick following
18 our call-in procedure. Wednesday she
19 called in and resigned.

20 Q. Okay. Okay. So after Ms.
21 Parrish did report the conflict she had
22 with Mr. Williams you attempted to
23 resolve the problem by moving her to

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1 another position, same pay, with no loss
2 in benefits, but she did not report to
3 that position; is that correct?

4 A. That is correct.

5 Q. Okay. And in that new position
6 she would not have been under his
7 supervision? Under Mr. Williams's
8 supervision?

9 A. That is correct.

10 Q. Did Ms. Parrish tell you that
11 she wanted Mr. Williams to be terminated
12 from the job completely so she would
13 have no --

14 A. She did --

15 Q. Pardon me?

16 A. She did make that statement.
17 She did make that statement, yes, ma'am.

18 Q. Okay. Was there any reason you
19 needed to terminate him?

20 A. No, ma'am. We disciplined both
21 employees equally, as well as she would
22 have received disciplinary action had
23 she returned to work that Monday. Mr.

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1 Williams did receive a disciplinary
2 action and then we separated the two.
3 We only have one team lead in the plant
4 that's on line three. It was not
5 feasible to move Frank to another
6 position, so we gave Linda one
7 additional chance after being moved from
8 line one initially in September to line
9 five due to similar altercations with
10 employees - other employees, not Frank.
11 We gave her the opportunity this time to
12 move to line -- I'm sorry, from line
13 three to line five in order to hopefully
14 alleviate those issues with employee
15 conflict.

16 Q. Okay. All right. Your
17 handbook, your manual. Do you have an
18 employee handbook that you gave Ms.
19 Parrish?

20 A. Yes, ma'am.

21 Q. And does it have any section in
22 there that explains how to -- the action
23 to take to resolve conflicts with

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1 employees, coworkers?

2 A. Yes, ma'am, we have a workplace
3 harassment policy.

4 Q. Okay. And did Ms. Parrish
5 follow that policy?

6 A. Yes, ma'am, she did. She did
7 fill out the paperwork for a
8 documentation about the conflict itself.

9 Q. Okay. And in your
10 investigation, did you say that you
11 found some merit to the allegation and
12 you did attempt to resolve the conflict
13 by moving Ms. Parrish to the other
14 position, which she did not report to?

15 A. Yes, ma'am. We felt both were
16 equally involved in the altercation,
17 both arguing, both employees argued,
18 both were involved equally, so they were
19 disciplined equally as well as separated
20 so that there would not be any future
21 altercations hopefully.

22 Q. Did you find Ms. Parrish's
23 safety to be in jeopardy in any way?

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1 A. No, ma'am.

2 Q. Okay. Is it correct you said
3 you found that she had been harassed or
4 that there was some type of personal
5 conflict between the two of them?

6 A. I did not determine any
7 harassment to be taking place. I did
8 determine the conflict between the two
9 in the form of an argument,
10 disagreement, had taken place.

11 Q. Okay. All right. And was there
12 a worker there before Ms. Parrish when
13 she stopped reporting to work?

14 A. Yes, ma'am.

15 Q. On the third day when Ms.
16 Parrish did not report to work, did I
17 understand you to say she called in to
18 say she had -- did she say she had quit?

19 A. Yes, ma'am, she called in and
20 resigned.

21 Q. Okay. Did she put it in
22 writing, or was it verbal?

23 A. Verbal in our call-in line.

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1 Q. Okay. That was -- that would be
2 Wednesday, June the 14th?

3 A. 21st.

4 Q. The 21st; I'm sorry.

5 A. 21st, yes, ma'am.

6 Q. Okay. Okay. Mr. Mance, is
7 there anything additional you want to
8 add to the information regarding the
9 separation?

10 A. No, ma'am.

11 MS. COOK: Okay. Mr. Taylor, do
12 you have any questions for Mr. Mance?

13 MR. TAYLOR: Yes, ma'am, I do.
14 Thank you.

15

16 EXAMINATION OF MR. MANCE BY MR. TAYLOR:

17 Q. Mr. Mance, when was the claimant
18 moved from line one to line three?

19 A. That would have been in
20 September, 2005.

21 Q. What was the reason for that
22 move?

23 A. Altercations with other

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1 employees, just general conflict on the
2 line.

3 Q. How many altercations took
4 place?

5 A. One final altercation led to the
6 separation of the two. Previous to
7 that, just general argument, conflict.

8 Q. How many women work on Mr.
9 Williams's line?

10 A. I know it would be five.

11 Q. How many complaints regarding
12 harassment or inappropriate behavior
13 have you received from those ladies?

14 A. None.

15 Q. How many altercations with other
16 employees has Mr. Williams been involved
17 in?

18 A. Mr. Williams has one additional
19 argument with another employee that did
20 result in a disciplinary action between
21 those two employees.

22 Q. Did the claimant make any
23 allegation that Mr. Williams was trying

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1 to strike her by throwing objects at
2 her?

3 A. She did make the statement that
4 -- just a moment; let me look at her
5 statement here. No, ma'am, I do not see
6 -- no, sir, I do not see anything in her
7 statement stating that he threw objects
8 at her; just a verbal altercation. In
9 her original statement she completed on
10 6/14, the alteration happened.

11 MR. TAYLOR: Thank you. I don't
12 have any further questions for --

13 MS. COOK: Okay. Ms. Crook, do
14 you have any questions for Mr. Mance?

15 MS. CROOK: Yes, ma'am, I do.

16
17 EXAMINATION OF MR. MANCE BY MS. CROOK:

18 Q. The altercation that resulted in
19 her being moved in September, according
20 to your testimony -- well, I take that
21 back. I don't want to get to that yet.

22 You said that she had complained
23 about Frank Williams once before, and

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1 when she did she was written up and he
2 was written up; is that correct?

3 A. No, ma'am, she had not
4 complained about Frank. There was an
5 altercation about inflammatory comments
6 that had been made. Investigating that,
7 we had statements from all employees
8 involved in those inflammatory comments
9 about Frank. It was one of the
10 employees involved. There was not a
11 complaint made about any type of
12 harassing or anything. It was an issue
13 of conflict, again, between employees;
14 no official complaint that Frank had
15 said anything or done anything to Linda.

16 Q. Isn't that when she came in and
17 told you guys that he had threatened her
18 and that she was afraid; the first time,
19 during that complaint she made to you,
20 he is a registered sex offender and I'm
21 afraid?

22 A. That was not her statement, no,
23 ma'am. Her statement -- that's not a

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1 proper statement.

2 Q. That's not part of her statement
3 that when she first came in and talked
4 to you and she was written up for saying
5 he was a registered sex offender?

6 A. No, ma'am. On February 16th,
7 I'll be happy to read her statement for
8 you.

9 Q. Okay.

10 A. At approximately 10:50 employee
11 came to me stating that Frank Williams
12 had come to them this a.m. stating that
13 I had been telling people that Frank
14 Williams is a child molester.
15 Immediately I met with Melvin Hutchins,
16 Chris Jordan with this matter. This is
17 after a previous meeting with Melvin
18 Hutchins on the topic of many concerns
19 with Frank in line three work
20 situations.

21 That's her statement on February
22 16th concerning the issue of
23 inflammatory comments made by Linda.

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1 Q. So she came in and said to you
2 that he was upset because she had told
3 somebody he was a registered sex
4 offender? He didn't come in and
5 complain about that, correct?

6 A. I do have his statement as well.

7 Q. Who came in and talked to you
8 about it first is what I'm asking you?

9 A. When the supervisor brought this
10 to my attention after Linda had spoken
11 with Melvin Hutchins and Chris Jordan,
12 according to the statement here.

13 Q. And you didn't consider this a
14 complaint by Linda?

15 A. No, ma'am.

16 Q. Exactly how far is line five
17 from line three where she was working?

18 A. It's separated; just an open
19 area within the plant, 20 feet, 30 feet.

20 Q. So when you say she wouldn't be
21 working with Frank Williams, that's not
22 true. She would still be working with
23 him?

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1 A. No, ma'am, the lines -- the
2 lines are situated in a -- in a fashion
3 that -- that they do not involve each
4 over. Each line is separate.

5 Q. Is it true that Frank is
6 supposed to fill in on lines when people
7 go to break?

8 A. No, ma'am. He does fill in some
9 breaks within his line as a floater on
10 line three.

11 Q. So he would never ever go to
12 line five or line one?

13 A. It -- it could be possible but
14 not -- not standard, no.

15 Q. Then when she came in to
16 complain again that he was cursing at
17 her, calling her names and throwing
18 things, she, again, was going to be
19 written up; is that correct?

20 A. Yes, ma'am, she was involved in
21 that altercation as well.

22 Q. In your sexual harassment policy
23 in your handbook, is there any

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1 protection against people who are
2 complaining of sexual harassment?

3 A. Yes, ma'am.

4 Q. What is that protection?

5 A. There's no retaliation allowed
6 for any harassment complaint.

7 Q. Okay.

8 A. And, again, realize no -- no
9 complaint has been formally made at this
10 point; it's been altercations and
11 conflicts.

12 Q. Isn't that a matter of
13 interpretation?

14 A. During the investigation it was
15 found that Linda was equally involved in
16 the conflict with other employees. In
17 several instances she was the instigator
18 in those conflicts.

19 Q. The incident that happened on
20 June -- yeah, June 14th, who were the
21 witnesses that you talked to?

22 MS. COOK: That's not necessary,
23 Ms. Crook. We don't need those names.

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1 Q. Well, did Linda give you any
2 names of witnesses she wanted you to
3 talk to?

4 A. I did the investigation and
5 talked with all witnesses presented.

6 Q. Did Linda give you the names of
7 witnesses that she wanted you to talk
8 to?

9 A. Let's see. She did write down
10 names of witnesses on her statement,
11 yes.

12 Q. And you did talk to all the
13 people whose names she gave you?

14 A. Yes, ma'am, I have their
15 statements as well.

16 Q. And were you mistaken when you
17 said that she called the call-in line
18 that she wouldn't be coming back to
19 work?

20 A. No, ma'am, she called in each
21 day, Monday and Tuesday.

22 Q. I'm talking about on the 6 -- on
23 the 20 -- I think it was 25th you said

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1 she called in and talked -- called the
2 call-in line?

3 A. On the 21st she may have called
4 Lee Allen Smith, called the call-in
5 line. I'm not sure.

6 Q. If she called Lee, that would be
7 personnel resources, correct?

8 A. That is human resources.
9 Personnel resources is our temporary
10 agency.

11 Q. Okay. Human resources. And
12 when she called -- assuming that's who
13 she called, did you ask her what Linda
14 said to her?

15 A. I have here that Linda, a
16 voluntary quit, no notice given.

17 Q. You have that from where?

18 A. Is what Lee Allen wrote on the
19 employee status change for the
20 termination.

21 Q. Did Linda tell you she was
22 afraid to come back to work?

23 A. She made the statement on Friday

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1 when talking with myself and Maryann
2 Boyer that she could not work in the --
3 she could not work with Frank Williams.
4 We informed her at that time that we
5 were transferring her to a different
6 line to hopefully alleviate the
7 situation to separate that conflict. We
8 did not find any fault with Frank as far
9 as his ability to work in the plant.
10 Hopefully received disciplinary equally.

11 Q. Has he ever been written up for
12 cursing at other people?

13 MS. COOK: That's not relevant,
14 Ms. Crook, about the other person. This
15 is only an employment hearing, and I'm
16 just trying to determine whether or not
17 there is good cause for separating from
18 this employment.

19 Q. (BY MS. CROOK:) Okay. Just a
20 minute. Could you tell me what you were
21 going to write Linda up for if she had
22 come back to work?

23 A. She would have been written up

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1 for, again, conflict on the line.

2 Causing conflict on the line.

3 Q. Did you not believe her when she
4 told you she was asking for help and he
5 just went off on her?

6 A. Could you clarify that for me?
7 Asking for help meaning?

8 Q. Well, earlier she testified that
9 she asked him to help her with some
10 redos and he just started cursing at
11 her, calling her names, and throwing
12 things. Did you not believe her when
13 she said that?

14 A. I believe there was an argument
15 when she came back from break that she
16 had, once again, instigated an argument
17 because of rework left on the table.
18 She was involved in yelling at Frank and
19 asking him to stay and do his rework
20 when he had been instructed by a
21 supervisor to cover the break and then
22 do additional duties beyond that
23 covering of the break. And he actually

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1 informed Linda at the time that he would
2 come back and do that rework once he had
3 finished what the supervisor had told
4 him to do.

5 Q. And that's what his statement
6 was?

7 A. Yes, ma'am.

8 Q. Did he -- did you have witnesses
9 that heard him say that to Linda?

10 A. I don't know if anyone -- I
11 don't know if anyone was in earshot to
12 hear the exact words.

13 Q. So it was his word against her
14 word as to what was said; is that right?

15 A. We have witnesses; I asked them
16 specifically what they said.

17 Q. You earlier testified that they
18 couldn't hear what was being said; they
19 just heard yelling.

20 A. Correct.

21 Q. Are you --

22 A. I'm looking through the notes
23 now.

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1 Q. Okay.

2 A. Just an altercation, just
3 yelling, yelling, could hear. Frank's
4 statement was that he was concerned and
5 the rework and he had been told by his
6 supervisor to get out some trash and do
7 some additional duties once he had
8 finished covering the break.

9 Q. Whose statement are you reading
10 now?

11 A. This would be from Frank
12 Williams.

13 MS. CROOK: Okay. That's all I
14 have.

15 MS. COOK: Okay. Mr. Mance, you
16 brought Mr. Williams in to give
17 testimony?

18 MR. MANCE: If necessary, yes,
19 ma'am.

20 MS. COOK: I don't think I have
21 any questions for Mr. Williams because
22 this case is a case of whether or not
23 Ms. Parrish voluntarily quit and her

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1 reasons if she voluntarily quit, and she
2 stated she felt constructively
3 terminated so I don't believe I have any
4 questions for Mr. Williams. Any from
5 you Mr. Taylor?

6 MR. TAYLOR: No, ma'am, we have
7 no questions for Mr. Williams. Don't
8 believe it's necessary for him to
9 testify.

10 MS. COOK: Okay. Do you, Ms.
11 Parrish? Do you have any questions for
12 Mr. Williams?

13 MS. PARRISH: No, ma'am.

14 MS. COOK: Do you, Ms. Crook?

15 MS. CROOK: No, ma'am.

16 MS. COOK: So this hearing is
17 adjourned. Is there -- is there
18 anything else either party wants to say?

19 MR. TAYLOR: The employer has
20 nothing further. Thank you.

21 MS. COOK: Okay.

22 MS. CROOK: No, ma'am.

23 MS. COOK: Well, thank you all

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1 -- thank you all for your time. I have
2 tape recorded the testimony. We will
3 use this tape later and make a decision
4 on Mrs. Parrish's eligibility for
5 unemployment benefits. Mail that
6 decision to both of you as soon as
7 possible; hopefully within the next two
8 to three weeks. You have to right to
9 appeal if you disagree. Thank you all
10 and have a good day.

11 MS. CROOK: Thank you.

12 MR. TAYLOR: Thank you.

13 (Whereupon, the hearing was adjourned.)
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367 VALLEY AVENUE

(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

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(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

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367 VALLEY AVENUE**(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660**

Training Documentation

I, Frank Williams have received training on
ccp#WICCP00300, ccp #WICCP 1100, WICCP00400, and
WICCP01000. I have received a copy and clearly understand the work
instructions.

Signed



Date

1-11-07

PLAINTIFF'S
EXHIBIT



**PLAINTIFF'S
EXHIBIT**
9

DATE: June 16, 2006
TO: Frank Williams
FR: Melvin Hutchins
RE: **Written Counseling – 1st Step**

**INCIDENT
OCCURRED ON
06/14/06**

On June 14, 2006 you used profanity in the presence of other co-workers. *This is a violation of plant work rule #16, fighting, threatening, intimidating, coercing, interfering with fellow associates, or any other acts of violence on company property.*

Failure to follow the company policy has resulted in you receiving this **1st Step – Written Counseling**. Any future violations will result in additional disciplinary action up to and including termination

Melvin Hutchins

Production Manager

Frank Williams

(Signature acknowledges
Receipt of this document
only.)

Nutcracker Brands Inc.



Nutcracker



EMPLOYMENT APPLICATION

PERSONAL (RESUME MAY BE ATTACHED) DATE 09-22-00

NAME: LAST Williams FIRST Frank MIDDLE INITIAL D

TEMPORARY ADDRESS CITY STATE ZIP CODE

PERMANENT ADDRESS CITY STATE ZIP CODE

AREA CODE-TEMPORARY PHONE NUMBER 334 692-3099 AREA CODE-PERMANENT PHONE NUMBER 334 692-4334 SOCIAL SECURITY NUMBER 417-02-3546

WERE YOU EVER EMPLOYED BY ALSTON PURINA, RALCORP HOLDINGS, OR ANY OF THEIR SUBSIDIARIES/AFFILIATES? ☐ YES ☐ NO IF YES, WHEN - WHERE

HAVE YOU EVER BEEN CONVICTED OF ANY FELONY? IF YES, DESCRIBE IN DETAIL (CONVICTIONS WILL NOT AUTOMATICALLY DISQUALIFY JOB CANDIDATES) YES ☐ NO Scoutory Rape my girlfriend was 2 years younger than me when I was 18

FOR WHAT POSITION ARE YOU APPLYING? open SALARY EXPECTATIONS open DATE AVAILABLE 09-25-00

HOW DID YOU BECOME AWARE OF THE POSITION? Bruce Cassidy

ARE YOU RELATED TO ANYONE EMPLOYED BY THE COMPANY? IF YES, WHO AND WHAT IS YOUR RELATIONSHIP? ☐ YES ☒ NO

WILL YOU WORK OVERTIME, IF REQUIRED? ☒ YES ☐ NO WILL YOU WORK WEEKENDS, IF REQUIRED? ☒ YES ☐ NO

EDUCATION

Achieved High School Diploma/GED? ☒ YES ☐ NO

(Include Education in Progress.)	FROM MO. YR.	TO MO. YR.	DIPLOMA DEGREE DATE	MAJOR	CLASS STANDING OR GRADE POINT AVERAGE
HIGH SCHOOL LOCATION <u>JFI Ingram</u>			<u>Ged</u>		
TECHNICAL SCHOOL/COLLEGE LOCATION <u>JFI Ingram</u>	<u>3-92</u>	<u>4-94</u>	<u>AA</u>	<u>Business</u>	<u>3.4</u>

PLEASE LIST SPECIAL SKILLS, CERTIFICATIONS OR QUALIFICATIONS YOU POSSESS (SUCH AS FOREIGN LANGUAGE FLUENCY, CPA, COMPUTER SKILLS, ETC.)

PLAINTIFF'S
EXHIBIT

PERIENCE

se list all past work history including military and summer work. Use additional paper if necessary. (Please complete fully even if submitting resume.)

RT WITH PRESENT/LAST EMPLOYER

SENT/LAST EMPLOYER <i>Jemps & Dathan</i>		EMPLOYER'S ADDRESS AND PHONE NUMBER <i>2256 Reeves St.</i>	
SUPERVISOR/PHONE NUMBER <i>Mike</i>		REASON FOR LEAVING <i>N/A</i>	DATES OF EMPLOYMENT FROM: <i>08-00</i> TO: <i>08-00</i>
STARTING SALARY <i>66.00</i>	PRESENT/LAST SALARY <i>88.50 hr.</i>	PRESENT/LAST BONUS/COMM.	YOUR JOB TITLE(S) <i>Pipe fitter</i>
DESCRIBE YOUR DUTIES AND RESPONSIBILITIES <i>Connected pipe, grinded</i>			

EMPLOYER <i>Personal Resources</i>		EMPLOYER'S ADDRESS AND PHONE NUMBER <i>Fresh</i>	
SUPERVISOR/PHONE NUMBER <i>Dennis Ellis</i>		REASON FOR LEAVING <i>Better Job</i>	DATES OF EMPLOYMENT FROM: <i>06-00</i> TO: <i>08-00</i>
STARTING SALARY <i>7.50</i>	PRESENT/LAST SALARY <i>7.50</i>	PRESENT/LAST BONUS/COMM.	YOUR JOB TITLE(S)
DESCRIBE YOUR DUTIES AND RESPONSIBILITIES <i>send milk, pull orders</i>			

EMPLOYER <i>Theroen Pokhand</i>		EMPLOYER'S ADDRESS AND PHONE NUMBER <i>Baker hill</i>	
SUPERVISOR/PHONE NUMBER <i>Terre Wheeler 687-7790</i>		REASON FOR LEAVING <i>Moved</i>	DATES OF EMPLOYMENT FROM: <i>04-98</i> TO: <i>06-00</i>
STARTING SALARY <i>6.50 hr.</i>	PRESENT/LAST SALARY <i>28,000 year</i>	PRESENT/LAST BONUS/COMM.	YOUR JOB TITLE(S) <i>First Supervisor</i>
DESCRIBE YOUR DUTIES AND RESPONSIBILITIES <i>oversee all production lines & make sure people where doing their jobs; Payroll check of all my employees</i>			

PLEASE PROVIDE THREE BUSINESS REFERENCES OTHER THAN THOSE LISTED ABOVE.

NAME <i>Bruce Cassidy</i>	TITLE <i>Supervisor</i>	PHONE NUMBER <i>Flavor House</i>	LENGTH OF TIME KNOWN <i>3 years</i>
NAME <i>Butch Cassidy</i>	TITLE <i>Supervisor</i>	PHONE NUMBER <i>11 11</i>	LENGTH OF TIME KNOWN <i>3 1/2 years</i>
NAME <i>Cecil Feibman</i>	TITLE <i>Supervisor</i>	PHONE NUMBER <i>COCA COLA</i>	LENGTH OF TIME KNOWN <i>12 years</i>

PLEASE READ THE FOLLOWING VERY CAREFULLY BEFORE SIGNING.

I acknowledge that the information I have supplied is correct to the best of my knowledge and belief without any omissions of any kind whatsoever. I understand that any falsifications, misrepresentations or omissions of fact may be grounds for rejection of my application or discharge at any time during my employment.

I understand that consideration for employment in this position is contingent upon the results of a reference and background check. I authorize the Company to investigate all statements made on my application for employment and to discuss the results of its investigations with those responsible for hiring. I further authorize the Company to contact my former employer(s) and any listed references or other persons who can verify information, and I give my consent for former employer(s) and other contacted persons to respond to questions pertaining to information on this application. Further, I release from liability such former employer(s) or other persons contacted by and providing information to the Company.

I understand that nothing in this application is intended to imply or create a contract of employment. I further understand that, if hired, my employment is at-will and can be terminated at any time for any reason, by the Company or me, with or without notice.

I acknowledge and agree that employment in the position for which I have applied may be contingent upon completion of a Company-paid physical examination. In addition, I understand that employment in this position is contingent upon successful completion of a test for the presence of illegal substances.

09-22-00
DATE (MONTH & YEAR)

APPLICANT'S SIGNATURE

Frank Walker

CONFIDENTIAL

FH000815

DOCUMENTATION FORM

Employee Name: Linda Thornton

Investigating Supervisor: Chris Jordan Date: 2-16-06

Present: Melvin Hutchins

Who was involved: Frank Williams

Witness (s): _____

Date of incident: 2-16-06

Where did it take place: In hallway of Plant.

When did it take place (time and day): 2-16-06 AM

What happened: At approximately 10:50AM an employee came to me stating that Frank Williams had come to them this am, stating that I had been telling people that Frank Williams was a child molester. Immediately I met with M. Hutchins / Chris Jordan with this matter. This is after a previous meeting with M. Hutchins on the topic of many concerns with Frank and line 2 work situations.

Did this result in down time? No If yes how much?

Did this result in product being scrapped? If yes how much? No

Attach an additional sheet if needed for witness statements following the same format.

Mark Beaul - present in smoking area

PLAINTIFF'S
EXHIBIT

FH000005

213

DOCUMENTATION FORM

Employee Name: Frank WilliamsInvestigating Supervisor: Chris Jordan Date: 2-16-06Present: D/AWho was involved: Linda ThorntonWitness (s): Jewell Silvey & Tracy BrantleyDate of incident: 2-16-06Where did it take place: Hall wayWhen did it take place (time and day): 2-9-06

What happened: Jewell Silvey came up to me
in the Hall way & told me that
Linda Thornton was outside telling everyone
that I was a child molester & my
Brother's wife's Daughter was my
girl friend this is harassment
and I don't like it I
don't start trouble. ~~that~~ what
happen 15 years ago is none of
her Business

Did this result in down time? No If yes how much?Did this result in product being scrapped? No If yes how much?

Attach an additional sheet if needed for witness statements following the same format.

PLAINTIFF'S
EXHIBIT

FH000003

12

211

Tracey Bryantley
Terrell Sillery
Dyckie Ward
Vickie Cook

DOCUMENTATION FORM

Employee Name: Jinda Thornton
Investigating Supervisor: Chris Gordon Date: 3-01-06
Present: M. Hutchins

Who was involved: Frank Williams

PLAINTIFF'S
EXHIBIT

Witness (s): N/A

13

Date of incident: Linda was told 2/28/06

Where did it take place: Break Area

When did it take place (time and day): After work

What happened: Repeatedly have been told of comments
that team leader has made against me,
One after investigation, very serious comments
and threats made.

I just want this to be over with,
which I believed it would be after
last week's meeting with Tommy in HR,
These threats & comments were made to an employee
in the front office.

Did this result in down time? N/A If yes how much?

Did this result in product being scrapped? If yes how much? N/A

Attach an additional sheet if needed for witness statements following the same format.

MEMORANDUM

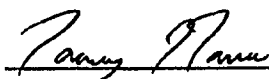
DATE: March 7, 2006
TO: Linda Thornton
FR: Tommy Nance
RE: Memo to File

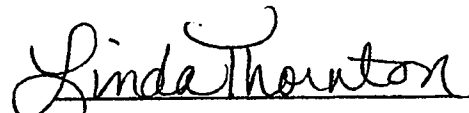
INCIDENT
OCCURRED ON
2/16/06

After investigating the events surrounding the allegations made on 2/16/06, I have determined that you acted in a way that was inflammatory and instigational. This is not the first altercation that has occurred between yourself and Frank Williams. Any continued comments of an inflammatory nature or comments meant to incite controversy will be dealt with in a similar fashion.

Failure to follow the proper procedures has resulted in you receiving this **Memo to File**.

Any future violations will result in additional disciplinary action up to and including termination.


Tommy Nance
Human Resources Manager


Linda Thornton
(Signature acknowledges
Receipt of this document
only.)

I disagree with entire situation and who made comments. also with my record 4 years of employment this should show.

**PLAINTIFF'S
EXHIBIT**

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FH000002

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EXHIBIT D



Ralcorp Holdings, Inc.
P.O. Box 618
St. Louis
Missouri 63166-0618

October 16, 2006

Ms. Bernice Williams-Kimbrough, District Director
Equal Employment Opportunity Commission
Birmingham District Office
Ridge Park Place, Suite 2000
1130 22nd Street, South
Birmingham, Alabama 35205

Re: Charging Party: Linda Thornton
Respondent: Flavor House Products, Inc.
EEOC Charge No.: 420-2006-05107

Dear Ms. Williams-Kimbrough:

I represent Flavor House Products, Inc., a subsidiary of Ralcorp Holdings, Inc. with respect to the above-captioned charge of discrimination. Please refer any further inquiries or correspondence regarding this matter to me.

Given the lengthy nature of the charge as well as my work schedule, I hereby request until November 27, 2006 to provide the Company's response.

Thank you for your consideration in this matter. If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Scott Clark'.

J. Scott Clark
Senior Counsel and
Director of Labor Relations
314-877-7106

For Flavor House Products, Inc.

cc: Mary Ann Boyer
Tommy Nance

S:\Employee\Folders\JSCOTT\EEOC ltr re Thornton 101606.doc

FFS 2011.520

LINDA THORNTON V. FLAVOR HOUSE -
PLAINTIFF'S RFP DOCS 0158

EXHIBIT E

SEPARATION AGREEMENT AND GENERAL RELEASE

This is a Separation Agreement and General Release (referred to as "Agreement") entered into this 4th day of December, 2006, by and between Thomas A. Nance (referred to as "EMPLOYEE") and Flavor House Products, Inc. (referred to as "COMPANY").

In consideration of the mutual promises contained in this Agreement, the COMPANY and the EMPLOYEE agree as follows:

1. EMPLOYEE and the COMPANY agree that EMPLOYEE'S employment with the COMPANY will terminate on December 4, 2006 and he will be removed from the payroll.
2. The COMPANY agrees:
 - a. to pay EMPLOYEE a lump sum settlement payment in the amount of \$2,581.25, less legally required deductions. The COMPANY will pay EMPLOYEE this payment within two (2) weeks of EMPLOYEE coming off the payroll or two (2) weeks of EMPLOYEE signing this Agreement, whichever is later;
 - b. to provide EMPLOYEE with up to two (2) months of health and dental insurance continuation from the date of EMPLOYEE'S termination of employment. These benefits shall be provided pursuant to COBRA; in order to receive these benefits, EMPLOYEE shall make any necessary elections to continue such benefits as required by the health insurance plan and COBRA; and
 - c. to pay EMPLOYEE for accrued vacation not yet taken in accordance with COMPANY policy, less legally required deductions, within two (2) weeks of EMPLOYEE'S last day on the payroll; and
 - d. to provide outplacement assistance.
3. EMPLOYEE and the COMPANY understand and agree that if EMPLOYEE obtains and begins employment with another company that offers benefits equivalent to those provided under Paragraph 2b prior to the end of the benefit continuation period set forth in Paragraph 2b, the COMPANY will immediately terminate EMPLOYEE'S benefits under Paragraph 2b. EMPLOYEE agrees to notify the COMPANY of this position if EMPLOYEE begins that job before the end of the benefit continuation period set forth in Paragraph 2b.
4. EMPLOYEE agrees:
 - a. to waive all claims to future employment with the COMPANY;
 - b. to cooperate with and assist the COMPANY whenever reasonably possible, so that all EMPLOYEE'S duties, responsibilities and pending matters can be transferred in an orderly way;

- c. to return all the COMPANY materials that may have been issued to EMPLOYEE, including, but not limited to, draft books, office equipment, credit cards, cash advances and, if necessary, to file any outstanding final expense report;
- d. not to use or to disclose, either directly or indirectly, to anyone not connected with the COMPANY any confidential information or trade secrets which EMPLOYEE obtained during the term of EMPLOYEE'S employment with the COMPANY;
- e. not to make any copies for use outside of the COMPANY of any client lists or any memoranda, books, records, or documents which contain confidential information or trade secrets belonging to the COMPANY;
- f. not to apply for unemployment compensation benefits until EMPLOYEE actually is removed from the COMPANY'S payroll; and
- g. to provide the COMPANY with reasonable cooperation and assistance, upon the COMPANY'S request, including testifying at all trials, when EMPLOYEE might have relevant information. The COMPANY shall pay EMPLOYEE for any reasonable and necessary expenses and any loss of wages or salary, which EMPLOYEE incurs because of EMPLOYEE'S requested cooperation with and assistance to the COMPANY.

5. It is understood and agreed that only the vacation payment identified in Paragraph 2c will be considered benefit earnings for applicable benefit plans of the COMPANY. Any other monies paid to EMPLOYEE pursuant to this agreement shall not constitute earnings for benefit plan purposes.

6. The promises and payments contained in Paragraphs 2 and 3 above are in addition to any wages, bonuses and commissions to which EMPLOYEE already is entitled because of EMPLOYEE'S work for the COMPANY. EMPLOYEE agrees to accept the promises and terms in Paragraphs 2 and 3 above in consideration for the settlement, waiver and release and discharge of any and all claims or actions against the COMPANY arising under any federal, state, or local statute, law, or regulation pertaining to employment discrimination on the basis of sex, race, color, religion, creed, national origin, handicap or disability, marital status, or any other reason established by law, including any claim of wrongful discharge, with the exception of age discrimination.

7. EMPLOYEE Makes The Following Promises Not To Sue:
 - a. EMPLOYEE releases, settles and forever discharges the COMPANY, including its agents and employees, from any and all claims, causes of action, rights, demands, debts, or damages of whatever nature, whether or not EMPLOYEE currently knows of them, which might have arisen from EMPLOYEE'S employment with and subsequent termination from the COMPANY and which may be brought by EMPLOYEE or another person or agency on EMPLOYEE'S behalf. This includes, but is not limited to, any claim EMPLOYEE might raise for wrongful discharge as well as any other claim raised under contract or tort law except those types of claims which the parties specifically have excluded from this release of claims and identified in Paragraph 8 below.
 - b. EMPLOYEE expressly releases the COMPANY from any and all legal liability and waives all claims, demands, or causes of action which EMPLOYEE may have against the COMPANY, its agents, representatives, and employees under all federal, state, and/or local laws regulating employment, including but not limited to, all discrimination claims under the Civil Rights Acts of 1964, as amended, the Americans with Disabilities Act, Civil Rights Act known as 42 USC 1981, the Handicap Discrimination Act and the Family and Medical Leave Act. By signing this Agreement, EMPLOYEE is not releasing any claims under the Age Discrimination in Employment Act.
8. This Agreement shall not affect EMPLOYEE'S right to raise any claims based on any Social Security or Workers' Compensation laws, or based on the terms of any employee pension or welfare benefit plans or programs of the COMPANY, including its subsidiaries and affiliated companies, which may involve benefits that should be paid to EMPLOYEE now or in the future.
9. This Agreement is intended to finally and fully conclude the employment relationship between EMPLOYEE and the COMPANY and shall not be interpreted as an admission by either the EMPLOYEE or the COMPANY of any wrongdoing or any violation of federal, state or local law, regulation, or ordinance. The COMPANY specifically denies that it, or its employees, supervisors, representatives, or agents has ever committed any wrongdoing whatsoever against EMPLOYEE.
10. EMPLOYEE agrees not to talk about, write about, or otherwise disclose the existence of this Agreement, the terms of this Agreement, or any fact concerning its negotiation, execution, or implementation to any person, firm, or corporation, other than the EMPLOYEE'S spouse or attorney, unless EMPLOYEE is required to do so by federal, state, or local law, or by a court of competent jurisdiction.

11. The Parties understand and agree that for purposes of this Agreement, the term "COMPANY" as used herein, shall include not only Flavor House Products, Inc., but also Bremner, Inc. and Nutcracker Brands, Inc., the subsidiary, affiliated and predecessor companies of any of them, and all officers, directors, agents, and employees of any of the foregoing.

12. This Agreement will be governed by and construed and enforced under the laws of the State of Alabama, without regard to its conflict of law rules.

13. In the event that any one or more of the provisions of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

14. EMPLOYEE expressly acknowledges that the COMPANY has given him a reasonable period of time to consider this Agreement and that EMPLOYEE has had the opportunity to discuss all aspects of this Agreement with an attorney before signing this Agreement. EMPLOYEE states that he has discussed this Separation Agreement and General Release or, in the alternative, has freely elected to waive any further opportunity to discuss this Agreement with an attorney before signing it.

15. EMPLOYEE expressly acknowledges that he understands all the terms and effect of this Agreement and is entering voluntarily into this Separation Agreement and General Release.

FLAVOR HOUSE PRODUCTS, INC.

Thomas A. Nance
Thomas A. Nance

By: Mary Ann Boyer
Mary Ann Boyer
Director of Operations

Signed this 8th day of
December, 2006

Signed this 4th day of
December, 2006

Witness: Brandi Nance

Dated: 12-8-06

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

LINDA THORNTON,

Plaintiff,

v.

FLAVOR HOUSE PRODUCTS, INC., and
FRANKLIN D. WILLIAMS, JR.,

Defendants.

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Civil Action No.:
1:07 cv-712-WKW

JURY DEMAND

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION TO DEFENDANT
FLAVOR HOUSE PRODUCTS, INC.

The plaintiff requests that the defendant produce and permit the plaintiff's representatives to inspect and copy the following documents at a mutually convenient place, and/or produce a copy of said documents to the law firm of Wiggins, Childs, Quinn & Pantazis, LLC, within the time set forth by the Court for the production of documents.

DEFINITIONS

A. As used herein, the definitions for the term "document" means without limitation, the following items, whether printed, recorded or reproduced by any other mechanical means or process, or written or produced by hand: agreements; contracts; communications; correspondence; letters; telegrams; tape recordings; memoranda; notes; summaries or other recordings of telephone conversations, personal conversations, or meetings; agenda of meetings; notices; records; bid records; personal memoranda; photographs; photographic slides; motion picture films; charts; graphs; diagrams; reports; statement of witnesses; findings of investigations; files; reports of experts; reports of consultants; papers; books; records; summaries; and any and every other writing or other graphic means by which human intelligence is in any

way transmitted or reported.

B. As used herein, the term "person" includes natural persons, governments (or agencies thereof), quasi-public entities, corporations, partnerships, ventures, and all other forms of organization, association or business entities.

C. If any document requested to be produced was in the defendant's possession, but is no longer in defendant's possession, or subject to defendant's control state what disposition was made of it, the reason for such disposition, the identity of the person currently having possession or control and the date that possession or control was relinquished by the defendant or any one of them.

D. "Personnel Information" shall include data or information which pertains to employees, applicants for employment, persons seeking employment, or former employees, and includes, but is not limited to, information on any individual or aggregate of individuals concerning applicant flow, residence, interviews, tests, evaluations, referrals from referral agencies, discipline, length of service, absences, tardiness, educational level, selection, job assignment and/or duties, performance, training, qualifications, validation of tests, promotion, health, and/or safety, vacancies, job applications, test results, marital status, sex, age, race, family status, recruitment, etc.

E. As used herein the term "discipline" shall include any action taken in regard to an employee which is intended to punish and/or correct some aspect of the employee's behavior conduct or performance, including, but not limited to, the following actions: verbal warning, written warning, verbal reprimand, written reprimand, suspension, demotion, placement or probation, fine, etc.

F. As used herein, the term "termination" shall include any one or more of the following actions which interrupt an employee's service of employment with the defendant: layoff, discharge, quit, resignation, terminated, fired, etc.

DOCUMENTS REQUESTED TO BE PRODUCED

The following documents are requested to be produced:

REQUESTS FOR PRODUCTION

1. The personnel file and any and all personnel information and pay information wherever maintained by the defendant of Linda Thornton.
2. The personnel file and any and all personnel information and pay information wherever maintained by the defendant of Franklin D. Williams, Jr.
3. The personnel file and any and all personnel information wherever maintained by the defendant of Kim Perkins.
4. The personnel file and any and all personnel information wherever maintained by the defendant of Mary Ann Boyer.
5. The personnel file and any and all personnel information wherever maintained by the defendant of Melvin Hutchins.
6. The personnel file and any and all personnel information wherever maintained by the defendant of Chris Jordan.
7. The personnel file and any and all personnel information wherever maintained by the defendant of Ricky Smothers.

8. The personnel file and any and all personnel information wherever maintained by the defendant of Leigh Allums.
9. The complete personnel file and any other personnel information wherever maintained by the defendant of every employee who participated in, oversaw, or concluded the conducting of an investigation of the complaint(s) of sexual harassment/discrimination and/or retaliation made by the plaintiff.
10. All documents used or produced to the EEOC during the investigation of the plaintiff's EEOC charge(s), including, but not limited to, all answers to questionnaires, position statements, correspondence, and interview notes.
11. Any employee and/or personnel handbook or policies or procedures manual in effect at any time during the plaintiff's employment. If different versions of these documents exist, all versions should be produced.
12. All documents that reflect and/or describe the policies, practices, procedures, rules, training or criteria of the defendant regarding hiring, promotions, temporary employees, operator machine maintenance, transfers, discipline, profanity, threatening behavior or conduct, performance evaluations, orientation, training, sexual harassment, sex discrimination, and/or retaliation.
13. Any document, including but not limited to letters, memoranda, e-mail messages, calendar entries, diary entries, or notes, daytimer entries, and/or any written statements or affidavits, that relate in any way to the defendant's employment, discipline and evaluation of the plaintiff and the cessation of employment of the plaintiff with the defendant.
14. All documents that reflect or relate in any way to any sexual harassment/discrimination policy that was in place at any time during the employment of the plaintiff, including but not limited to the

policies themselves, any documents related to the distribution of the policies, documents relating to or reflecting any training on sexual harassment/discrimination conducted by or for employees of the defendant at any time from January 1, 2001, to the present, and any documents related to the protocol regarding the handling and/or investigation of complaints of sexual harassment/discrimination, including, but not limited to, log books reflecting training, training material(s), sign up sheets, videos, etc. If the policies are part of a handbook, manual, etc., please produce the entire underlying documents(s).

15. All documents that reflect or relate in any way to any retaliation policy that was in place at any time during the employment of the plaintiff, including but not limited to the policies themselves, any documents related to the distribution of the policies, documents relating to or reflecting any training on retaliation conducted by or for employees of the defendant at any time from January 1, 2001, to the present, and any documents related to the protocol regarding the handling and/or investigation of complaints of racial harassment/discrimination, including, but not limited to, log books reflecting training, training material(s), sign up sheets, videos, etc. If the policies are part of a handbook, manual, etc., please produce the entire underlying documents(s).

16. Please produce any and all documents relating to any reports of sexual harassment, sexual discrimination or retaliation made against employees of defendant since January 1, 2000, including verbal and written complaints and/or EEOC charges; or to any investigation into such complaints, including but not limited to any notes, correspondence, tapes, transcripts, or other documents relating to any interviews conducted in response to the allegations; or relating to the result of the investigation, whether or not the complaints were investigated or not investigated and regardless of the findings of same, including lawsuits that have been filed against the defendant alleging racial harassment and/or race discrimination.

17. Any and all video and/or audio recordings pertaining in any way to the plaintiff's claims in this litigation and/or the defenses asserted by the defendant in response thereto.

18. Any statements obtained from the plaintiff or from any individual regarding the allegations made by the plaintiff in the Complaint.

19. Provide a copy of the job description for each of the following positions at the defendant's Houston, County, Alabama facilities during the time period of the plaintiff's employment:

(a) Label Operator

(b) Team Leader

(c) Production Manager

(d) Packaging Supervisor, and

(e) Director of Operations.

If different versions have been in existence, please provide a copy of each.

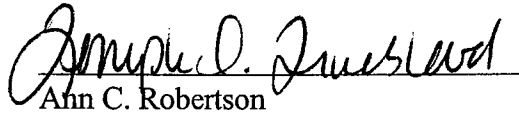
20. All documents that reflect, record, make reference to or otherwise relate in any way to or allegedly support the reasons that the plaintiff was subjected to discipline while employed with the defendant.

21. Please produce any and all documents reflecting, referencing, or otherwise related to communications made between or among Franklin D. Williams, Jr., Mary Ann Boyer, Melvin Hutchins, Kim Perkins, Chris Jordan, Ricky Smothers, Tommy [LNU] of Personnel Relations, and/or Leigh Allums regarding the plaintiff. This request includes any documentation of phone messages, e-mails, instant messages, text messages, correspondence, memoranda, and other forms of communication between and/or among these individuals regarding the plaintiff.

22. Any document, including but not limited to letters, memoranda, electronic mail (e-mail) messages, calendar entries, diary entries, notes, daytimer entries, and/or any written statements, declarations or affidavits, that relate in any way to the defendant's employment, evaluation, discipline, receipt or investigation of complaints of discrimination, and/or cessation of employment of the plaintiff.

23. Operational chart(s) of the defendant reflecting all offices, branches and installations operated by the defendant within Houston County, Alabama, during the time of the plaintiff's employment.

Respectfully submitted,



Ann C. Robertson
Temple D. Trueblood
Counsel for Plaintiff

OF COUNSEL:
WIGGINS, CHILDS, QUINN & PANTAZIS, L.L.C.

The Kress Building
301 19th Street North
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CO- COUNSEL:

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334-681-8062

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following via facsimile and first class U.S. Mail, postage pre-paid and properly addressed to:

Christopher W. Weller
Capell & Howard, P.C.
150 South Perry Street
Montgomery, Alabama 36104
Facsimile: (334) 241-8266

Anderson B. Scott
Christine E. Howard
Fisher & Phillips, LLP
945 East Paces Ferry Road
Atlanta, Georgia 30326
Facsimile: (404) 240-4249

on this the 23rd day of October, 2007.


OF COUNSEL

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

LINDA THORNTON,

Plaintiff,

v.

**FLAVOR HOUSE PRODUCTS, INC., and
FRANKLIN D. WILLIAMS, JR.,**

Defendants.

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**Civil Action No.:
1:07 cv-712-WKW**

JURY DEMAND

**PLAINTIFF'S MOTION TO STRIKE AFFIRMATIVE DEFENSES
OF DEFENDANT, FLAVOR HOUSE PRODUCTS, INC.**

COMES NOW the Plaintiff, Linda Thornton, and respectfully moves this Honorable Court to strike the affirmative defenses of Defendant, Flavor House Products, Inc., in the above styled cause due to spoliation of evidence by the Defendant. In support whereof, the Plaintiff submits the following:

1. On or about September 18, 2006, Plaintiff timely filed a charge of employment discrimination with the Equal Employment Opportunities Commission, the "EEOC", (Charge # 420-2006-05107), in which she complained that the Defendants subjected her to sexual discrimination, sexual harassment, and retaliation in relation to the terms, conditions and benefits of her employment. [Ex. A].

2. The Notice of Charge was mailed by the EEOC to Flavor House on September 26, 2006. [Ex. B].

3. Human Resources Director, Tommy Nance, received a copy of the plaintiff's EEOC Charge and forwarded it to corporate counsel. [Ex. C, pp. 52-53 and Exhibit 3]. At this time, while Nance was employed with Flavor House, all of his investigative notes were located in his desk. [Ex.

C, pp. 54-55].

4. As of October 16, 2006, Flavor House's legal counsel had received the plaintiff's EEOC Charge and was put on notice of the plaintiff's claims. [Ex. D].

5. Nance was involuntarily terminated by Flavor House on December 4, 2006. [Ex. C].

6. On August 6, 2007, the plaintiff filed her Complaint in this action, asserting claims against defendant, Flavor House, Inc. ("Flavor House"), of sexual harassment, sex discrimination and retaliation under Title VII; invasion of privacy; outrage; and negligent and/or wanton hiring, supervision, training and retention. [Doc. 1, Counts I - IV].

7. With regard to her Title VII claims against Flavor House, the plaintiff specifically alleged that she repeatedly complained of the sexual harassment and sex discrimination to members of management including MaryAnn Boyer, Melvin Hutchins, and Chris Jordan, and also to Tommy Nance of Human Resources; but no corrective action was taken and the sexual harassment and discrimination continued. [Doc. 1, ¶¶ 13, 20-22, 24, 27, 30, 37-40, 43, 48-50, 57).

8. With regard to her state law claims of invasion of privacy and outrage against Flavor House, the plaintiff specifically alleged that the defendant condoned, authorized or ratified the conduct of Franklin Williams and that it knew or should have known of William's tortious conduct against her and failed to stop the conduct. [Doc. 1, Counts II-III].

9. With regard to her state law claim of negligent and/or wanton hiring, supervision, training and retention against defendant Flavor House, the plaintiff specifically alleged that the defendant negligently and/or wantonly hired, supervised, trained and/or retained Franklin Williams and other employees. [Doc. 1, Count IV].

10. On August 28, 2007, defendant Flavor House submitted an Answer to the Complaint, in which the defendant asserted the following relevant affirmative defenses to plaintiff's claims:

- While defendant expressly denies that it or any employee under its supervision acted in any manner which would constitute a violation of plaintiff's rights, if plaintiff's rights were violated, such violation occurred outside the scope of such persons' employment and with out the consent of defendant. Defendant neither knew nor had reason to know of any such circumstance. Defendant did not condone, ratify, or tolerate any such conduct but instead prohibited such conduct [Doc. 5, Tenth Defense];
- To the extent that plaintiff failed to give timely notice to defendant that she believed she suffered the alleged conduct, a reasonable opportunity to investigate and/or remedy the alleged conduct, Plaintiff's claims are barred by the doctrines of unclean hands and laches [Doc 5, Eleventh Defense];
- To the extent that plaintiff failed to follow defendant's published policies and procedures prohibiting harassment, plaintiff's claims are barred by the doctrines of estoppel and waiver [Doc. 5, Twelfth Defense];
- Plaintiff's claims are barred to the extent that defendants exercised reasonable care to prevent and correct promptly any harassing behavior and plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by defendant or to avoid harm otherwise [Doc. 5, Seventeenth Defense]; and
- Defendant may not be held vicariously liable for punitive damages under Title VII based on unlawful employment actions made by its agents, if any are proven, because any such unlawful actions were contrary to defendant's policies and good faith efforts to comply with Title VII [Doc. 5, Twenty-Eighth Defense].

11. While conducting discovery in this matter, it was found that the defendant had failed to maintain or had otherwise despoiled evidence which is clearly and directly relevant to factual matters which have direct bearing on the affirmative defenses set out above. Specifically, the defendant has despoiled evidence of the plaintiff's complaints of sexual harassment and/or sex discrimination; evidence of what, if any, investigation was conducted in response to these complaints; evidence of what, if any, determinations were made as a result of the investigation; and

evidence of what, if any, remedial and/or corrective action was taken by the defendant in response to these complaints.

12. Plaintiff submitted Requests for Production to Flavor House seeking, in pertinent part, the following items:

16. Please produce any and all documents relating to any reports of sexual harassment, sexual discrimination or retaliation made against employees of defendant since January 1, 2000, including verbal and written complaints and/or EEOC charges; or to any investigation into such complaints, including but not limited to any notes, correspondence, tapes, transcripts, or other documents relating to any interviews conducted in response to the allegations; or relating to the result of the investigation, whether or not the complaints were investigated or not investigated and regardless of the findings of same, including lawsuits that have been filed against the defendant alleging racial harassment and/or race discrimination.

[Ex. F, Request No. 16].

13. As set out in detail below, during Nance's deposition it was discovered that: (1) he had no independent recollection of any components of the investigations he allegedly conducted in response to the plaintiff's complaints; (2) that he would have to rely on the investigative notes he allegedly made at the time of the plaintiff's complaints in order to recall any aspects of the investigation; and (3) these investigative notes are purportedly "missing," and to date have not been produced by the defendant.

14. Specifically, Nance testified that in order to conduct an investigation of a complaint, the company would collect statements from persons involved or with knowledge of the complaint and then they would investigate by taking these statements and interviewing the individuals. [Ex. C, pp. 32-34]. Nance made notes of the interviews with the individuals and these investigative notes are separate from initial written statements of employees. [Ex. C, pp. 34 and 43]. These notes were filed in his desk drawer and organized either by person, date or incident name. [Ex. C, pp. 36-37].

15. Per Nance, the purpose of these interviews was to “reiterate and bring out anything that’s in addition to the statements to help make a decision as to what occurred relative to the statements.” [Ex. C, pp. 56-57]. And it was what Nance learned during the “investigative process,” that, “would have determined the outcome of the investigation.” [Ex. C, p.60]. He does not rely on his memory of specific investigations, as he “take[s] notes based on investigations, and [he] make[s] determinations based off of those notes.” [Ex. C, pp. 106-107].

16. With regard to the defendant’s actions allegedly taken in response to the plaintiff’s specific complaints of harassment made against defendant Franklin Williams, Jr., Nance’s deposition testimony repeatedly evidences that without his investigative notes, Nance has no memories of having a conversation with Williams about the plaintiff’s accusations, of the individual conversations he had during the investigation, or of who he spoke to during the investigation:

Q. Okay. So you don’t have any independent knowledge of talking to Frank Williams about Plaintiff’s Exhibit Number 2?

A. I’m sure I investigated and talked with individuals. I don’t recall the specific conversation, no.

Q. And would that conversation or notes concerning your conversation be included in your notes surrounding the investigation of Ms. Thornton’s allegations?

A. All the notes for the 6/14 incident would have been included in my notes in the desk.

Q. So—so your notes concerning what Mr. Williams did or didn’t say when you interviewed him would be in those notes?

A. Yes.

[Ex. C, pp. 55-56]

* * *

Q. Do you recall whether you learned anything new from Mr. Williams?

A. I don’t recall from memory, no.

[Ex. C, p. 57]

* * *

Q. Do you remember whether he admitted to you that he did curse her?

A. I don’t recall if he admitted that or not from memory, no. I don’t recall that.

Q. Do you remember if he denied—

A. I don’t recall, no.

[Ex. C, p. 57; and see also p. 86]

* * *

Q. All right. Do you recall what Mr. Williams said about whether or not he was throwing cans during the incident that Ms. Thornton describes in that Exhibit?

A. I don't recall other than Frank's statement. From memory, no.

Q. And do you recall whether you asked any other witnesses whether or not they saw--could see whether or not he was throwing cans?

A. Not from memory. Again, my notes had, you know, the investigation of what occurred. I don't recall if anyone else said there was cans being thrown or there was anything going on. I don't recall that, no.

[Ex. C, p. 67]

* * *

Q. Do you remember having an interview with Katherine Long?

A. I don't recall the interview, no, investigation. Not from memory.

Q. Now in her statement she -- she says she heard Frank using the F word and -- I'm not looking at the document. I think she said something about not being able to do every damn thing; is that right?

A. That is her statement, yes.

Q. And then it said except he was doing a lot of yelling, etcetera, etcetera, etcetera, etcetera. Do -- do you -- did you ask her to expound on that etcetera, etcetera, etcetera when you had an interview with her?

A. I probably would have. I don't recall what that would have been without my notes. From memory, I don't recall that.

[Ex. C, pp. 67-68].

* * *

Q. Plaintiff's Exhibit Number 6 is the Tamekia Cook statement. Do you remember interviewing Tamekia Cook?

A. Not from memory, no.

Q. Do you think you took notes on that?

A. I'm sure I would have, yes.

[Ex. C, pp. 68-69]

* * *

Q. Did you do any -- did you talk to anybody else in that investigation other than the people I've -- the -- witnesses I've put in front of you?

A. I wouldn't recall from memory who I talked with.

[Ex. C, p. 70].

* * *

A. The other employees did not state the cursing was directed towards Linda.

Q. They weren't asked, were they?

Ms. SWAIN: Objection.

A. I don't recall one way or the other.

[Ex. C, pp. 84-85].

* * *

Q. Do you recall if you followed up with Linda Thornton to find out what the issues that she discussed with Melvin Hutchins were?

A. During the investigation, I'm sure I asked anything relevant to the statement.

Q. And do you have any independent memory of that?

A. Again, I would have had notes on that. I don't recall from memory.

[Ex. C, p. 106].

[See also, Ex. C, pp. 112-117 (reflecting Nance's inability, absent his notes, to recall discussion with Williams regarding his convictions for sex-related offenses).

17. Nor does Nance have any independent memory of the substance of the plaintiff's complaints to him, without the aid of his missing notes:

Q. Do you have any independent memory of having a conversation with Linda Thornton about the issues she's referring to that she discussed with Melvin Hutchins about Frank Williams?

A. I recall having multiple conversations with Linda Thornton throughout the course of her employment with Flavor House in regards to multiple issues.

Q. Uh-huh.

A. Now, to tell you specifically what memory related to what issue, I can't rely on my memory for that, no. That's why I have notes.

Q. Okay. And where are those notes, sir?

A. Again, I've already answered that question. My notes were in my desk drawer when I left Flavor House.

[Ex. C, pp. 107-108].

* * *

Q. She was complaining that Frank was making threats about what he was going to do to her; right?

MS. SWAIN: Objection.

A. I don't – I don't know what those allegations were, what her –

Q. You don't remember –

A. – comments where.

Q. –any–any of– did you have a conversation with her?

A. I investigate every statement that comes in, every documentation form, yes.

Q. My question is, did you have a conversation with her after you received Plaintiffs 13 about what kind of threats were being made?

A. I don't recall specific conversations I've had about the investigation.

Q. I didn't ask you about the specifics. I asked did you have a conversation.

A. We probably did. If a statement was turned in, then there was a follow-up investigation.

Q. But you don't remember anything about it?

A. That's why I have notes.

Q. Which we don't have; is that right?

A. (No response.)

Q. You don't remember any – you need to answer out loud for the court reporter.

A. There was no answer. The notes aren't here.

[Ex. C, pp. 143-144].

* * *

Q. Okay. Do you remember what she said the threats were?

A. Not from memory, no.

Q. Do you remember that he was going around saying he was going to fuck her up if she – if he lost his job by her saying that he was a child molester?

MS. SWAIN: Objection

A. I don't recall those specific – it's not in the statements.

Q. You have no recollection of – of her complaining about that?

A. No, I do not.

[Ex. C, p. 145].

18. Without looking at his notes, Nance cannot recall if he ever even received a complaint of sexual harassment while at Flavor House. [Ex. C, p. 35].

19. As of the time of his deposition, Nance no longer had his notes and did not know what happened to his investigative notes from when he had interviewed people that has given written statements. [Ex. C, pp. 42, 58].

20. When Nance received the plaintiff's EEOC Charge in 2006 all of his investigative notes were filed in his desk. [Ex. C, pp. 52-55]. Nance has testified that he did not turn over these notes to anyone when he left the employment of Flavor House, **“unless requested by corporate counsel. Any documentation we had was sent to them.”** [Ex. C, p. 108](emphasis added).

21. Despite the plaintiff's specific Request for Production to the defendant requesting such investigation notes and materials, to date the notes allegedly made by Nance in response to the plaintiff's complaints have not been produced or made available by the defendant and it is the plaintiff's understanding that these materials are simply nowhere to be found. No further explanation

has been given.

22. As of September 2006, Nance as the Human Resources Director was put on notice of the plaintiff's pending EEOC claims against FlavorHouse. As of October 16, 2006, Flavor House's legal counsel was put on notice of the plaintiff's pending EEOC claims against FlavorHouse. Nance's employment with Flavor House was not terminated until December 4, 2006. The defendant was placed on notice of plaintiff's claims well before Nance's termination and thus had an obligation to preserve and maintain all relevant documentation and evidence related to same. See Wal-Mart Stores, Inc. v. Goodman, 789 So.2d 166, 176 (Ala.2000)(spoliation is an attempt by a party to suppress or destroy material evidence favorable to the party's adversary), quoting May v. Moore, 424 So.2d 596, 603 (Ala.1982).

23. While Nance was employed by Flavor House, his investigative notes were still maintained and filed in his desk. Nance has testified he did not take these notes with him, and did not turn them over to anyone, "unless requested by corporate counsel." Nance was the individual who allegedly took some of the plaintiff's complaints of sexual harassment and discrimination, who allegedly took responsive action and investigated these complaints, and who allegedly made determinations about the plaintiff's complaints based upon his investigation. Yet, he has no independent recollection of any of these matters and his investigation notes, upon which he needs to rely, are nowhere to be found.

24. While federal law governs the imposition of spoliation sanctions as an evidentiary matter, the federal law in the Eleventh Circuit does not set forth specific guidelines and this Circuit takes direction from applicable state law factors. Flury v. Daimler Chrysler Corp., 427 F.3d 939, 944 (11th Cir. 2005). In Alabama, the courts analyze spoliation issues in terms of four factors: the

importance of the evidence destroyed; the culpability of the offending parties; fundamental fairness; and alternative sources of information. Vesta Fire Ins. Corp. v. Milam & Co. Const., Inc., 901 So.2d 84, 94-95 (Ala. 2004).

25. As to the first factor, the importance of the evidence destroyed or otherwise lost is paramount to the defendant's affirmative defenses, the plaintiff's ability to rebut same, and to plaintiff's claims for punitive damages. How is the plaintiff to prove the defendant failed to take effective remedial measures if she cannot obtain discovery as to what those investigative measures actually were? Nor can the defendant assert that the plaintiff failed to take advantage of their policies or to mitigate the circumstances if there is no evidence of her complaints and their substance. The defendant is also attempting to prove that it did not condone or otherwise ratify defendant William's conduct, yet cannot produce evidence as to whether or not they investigated the complaints against him, whether Williams may have admitted to the conduct alleged, or what other evidence may have been unearthed during the alleged investigation. All of these matters are paramount to plaintiff's claims and the affirmative defenses asserted in response thereto.

26. The culpability of the defendant is also a factor to weigh in this matter. The defendant, and it's legal counsel, knew of the plaintiff's pending EEOC charges as early as September 2006 and either one of two things occurred: (1) the defendant took no steps whatsoever to preserve the investigative notes and files of the Human Resources Director regarding the plaintiff's complaints and destroyed them; or (2) Nance provided the investigative notes and files to corporate counsel at their request and the documents have since disappeared with no explanation given. Culpability exists in both scenarios.

27. When viewed from the plaintiff's perspective, the fundamental fairness of this matter is specifically askew. The plaintiff repeatedly complained to her employer in an attempt to stop the sexual harassment and discrimination to which she was subjected. The plaintiff alleges the defendant did nothing to stop the sexual harassment and discrimination and instead retaliated against her. Now, as the plaintiff seeks recourse in the court system, the very evidence of her complaints and attempts to resolve this matter absent legal action is simply gone. The plaintiff has no way to reproduce or otherwise locate such items and is faced with the claim that the defendant's institutional memory regarding her complaints has simply been wiped clean, with no explanation from the defendant as to why this occurred.

28. And lastly, the plaintiff has no alternative means by which she may acquire the "lost" information as the only individual involved in investigation her complaints, interviewing witnesses, compiling investigative notes, and making determinations from those notes now has no independent recollection of the matter, as evidenced by Nance's deposition testimony. There simply is no alternative means by which the plaintiff can discover the substance of Nance's alleged investigation and upon what his determinations were based.

29. Based on the foregoing, the plaintiff now seeks sanctions against Flavor House, including the striking of the defendant's affirmative defenses as set out above. Nance's inability to independently recall information regarding the plaintiff's complaints and his investigations regarding same coupled with his inability to account for his missing notes serves as sufficient basis for spoliation sanctions. Additionally, the defendant FlavorHouse has provided no explanation for the disappearance of Nance's investigative files regarding the plaintiff. See Continental Cas. Co. v. Compass Bank, 2006 WL 533510, 1-2 (S.D.Ala. 2006). The defendant's actions have served only

to thwart the plaintiff's efforts to uncover the truth regarding Flavor House's handling of and response to the plaintiff's complaints of sexual harassment and discrimination such that the plaintiff is placed at a disadvantage in properly responding to the defendant's inevitable summary judgment motion and to otherwise prepare for trial. Additionally, Nance's utter lack of memory and the unexplained erasure of the defendant's institutional memory place the plaintiff in a position where she is denied her Constitutionally protected due process rights as she is unable to effectively cross examine Nance, or a corporate representative, on such matters or to elicit evidence essential to a credibility determination.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff respectfully moves this Honorable Court to order sanctions by striking the affirmative defenses of the defendant Flavor House, as set out herein, for both the purposes of summary judgment and trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 23rd day of July, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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